TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 606

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY, ATLANTA & WEST POINT RAILROAD COMPANY, ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, ET AL.

No. 608

POCAHONTAS OPERATOR'S ASSOCIATION, EMPIRE COAL & COKE COMPANY, AND POCAHONTAS FUEL COMPANY, INCORPORATED, APPELLANTS,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY, ATLANTA & WEST POINT RAILROAD COMPANY, ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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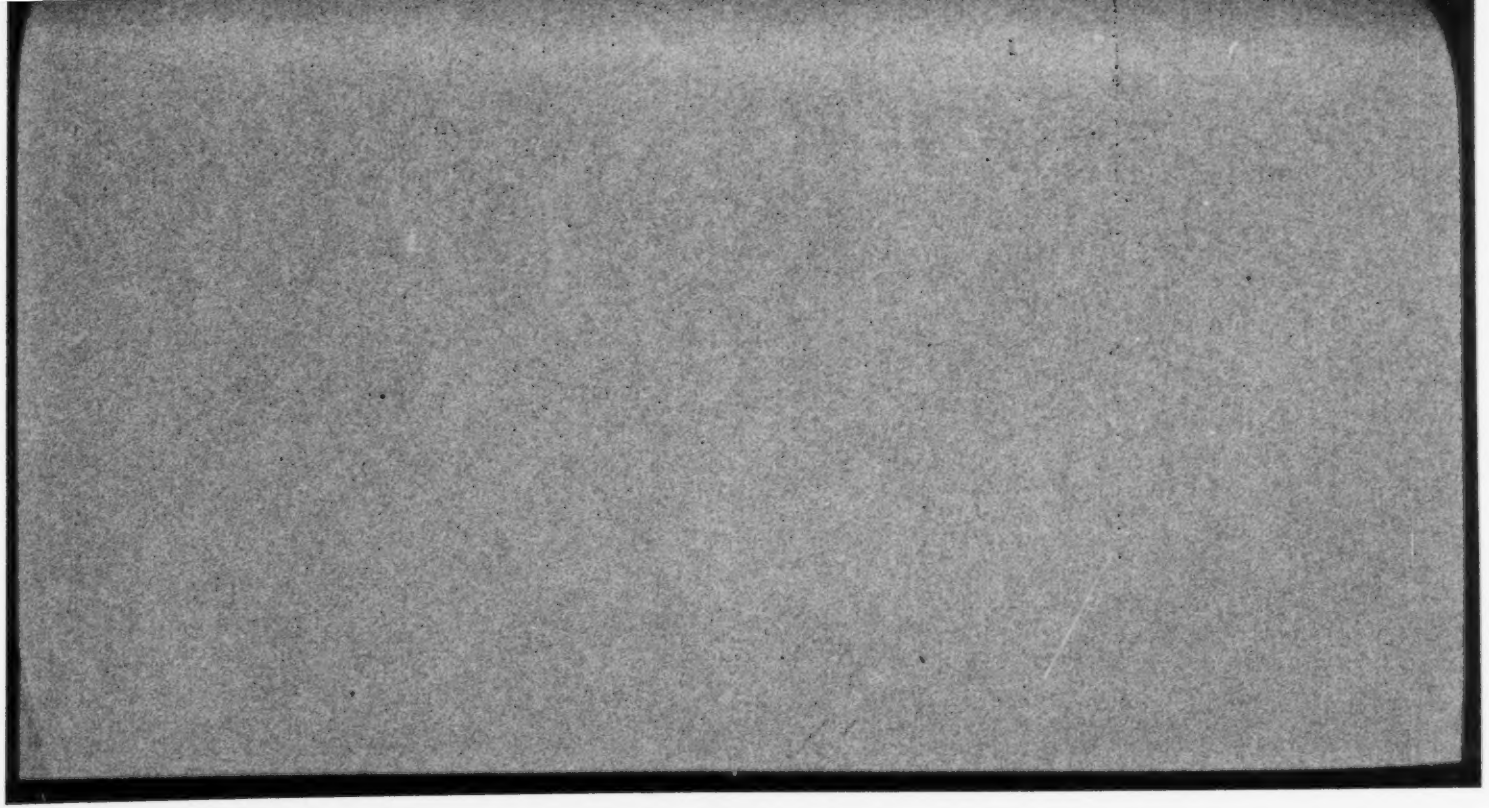

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vs.

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INDEX

	Original	Print
Record from United States District Court, Eastern District of Pennsylvania:		
Docket entries	A	1
Bill of Complaint	1	3
Exhibit A. Decision of Interstate Commerce Commission of June 13, 1923 [omitted in printing].		
Exhibit B. Decision of Interstate Commerce Commission of December 23, 1924 [omitted in printing].		
Answer of the United States	26	14
Intervention of Interstate Commerce Commission	31	15
Answer of Interstate Commerce Commission	32	16
Petition of Central Pennsylvania Coal Producers Association for leave to intervene [omitted in printing].		

	Original	Print
Record from United States District Court, Eastern District of Pennsylvania—Continued.		
Petition of Pocahontas Operator's Association, et al. for leave to intervene	43	18
Statement in narrative form of the testimony of plaintiff's witnesses	47	20
Testimony of John F. Deasy	47	20
John W. Neesner	53	24
R. R. Harris	55	26
J. J. Moynihan	56	27
J. T. Fitzgerald	58	28
R. C. Parsons	59	29
W. A. Collia	60	30
E. J. Sturtevant	62	31
D. E. Spangler	62	32
W. F. Lee	64	33
J. M. Hood	64	33
C. M. Butler	65	34
S. J. Trudeau	65	34
George Henry Jenkins	65	34
Guy G. Butler	66	35
J. J. Foley	66	35
H. A. Empie	67	35
A. L. Lewis	67	35
J. N. Haines	67	36
O. W. Campbell	68	36
E. M. Wrenne	69	37
J. L. O'Toole	69	37
A. T. Owen	71	38
Stipulation re narrative of testimony	72	39
Plaintiff's Exhibit 4. Rules governing the distribution of cars for coal and coke	73	40
Opinion, Thompson, J.	77	42
Final decree	104	57
Petition for appeal by United States and Interstate Commerce Commission	105	58
Assignments of error of United States and Interstate Commerce Commission	106	59
Order allowing appeal of United States and Interstate Commerce Commission	110	59
Præcipe for transcript of record	111	59
Summonses and severances	113	60
Notice of appeal	115	61
Citation and service [omitted in printing]	116	62
Clerk's certificate [omitted in printing]	117	62
Petition for appeal by intervenors, Pocahontas Operators' Association et al	118	62
Order allowing appeal	119	63
Assignments of error	120	63
Citation and service [omitted in printing]	125	66
Clerk's certificate [omitted in printing]	127	66
Stipulation re appeal papers of intervenors	128	66
Statements of points to be relied upon and designation by appellants of parts of the record to be printed	130	67
Orders extending time	139	69

In United States District Court, Eastern District of Pennsylvania

3285. March term, 1925

AKRON, CANTON & YOUNGSTOWN RAILWAY; ATLANTA & WEST POINT Railroad Company; Atlanta, Birmingham & Atlantic Rwy. Co.; Atlantic Coast Line Railroad Co.; Baltimore & Ohio Railroad Co.; Boston & Maine Railroad; Canadian National Railway Co.; Central New Eng. Railway Co.; Central Railroad Co. of N. J.; Chesapeake & Ohio Rwy. Co.; Cleveland, Cinn., Chicago & St. Louis Rwy. Co.; Delaware & Hudson Co.; Del., Lackawanna & Western RR. Co.; Elgin, Joliet & Eastern Rwy. Co.; Erie Railroad Co.; the Hocking Valley Rwy. Co.; Lehigh Valley Railroad Co.; Louisville & Nashville Railroad Co.; Michigan Central Railroad Co.; Minneapolis & St. Louis RR. Co.; Missouri-Kansas-Texas RR. Co.; Nashville, Chattanooga & St. Louis Rwy. Co.; New York Central Railroad Co.; the N. Y., Chicago & St. Louis RR. Co.; New York, New Haven & Hartford RR. Co.; New York Ontario & Western Rwy. Co.; Norfolk & Western Railway Co.; The Penna Railroad Co.; Pere-Marquette Railway Co.; Pittsburg & Lake Erie Railroad Co.; Reading Company; St. Louis Southwestern Railway Co.; Virginian Railway Co.; Wabash Railway Co.; the Wheeling & Lake Erie Rwy. Co., plaintiffs (F. M. Rivinus),

VS.

UNITED STATES OF AMERICA, DEFENDANT (GEORGE W. COLES), AND Interstate Commerce Commission (P. J. Farrell, R. Granville Curry), Central Pennsylvania Coal Producers' Ass'n., Pocohontas Operators' Ass'n., et al., intervening defendants (A. M. Liveright, J. F. Bullitt, Greever & Gillespie)

Docket entries

Mar. 12, 1925. Bill of complaint filed.
Mar. 18, 1925. Affidavit as to service of bill of complaint filed.
Apr. 3, 1925. Appearance of P. J. Farrell and R. Granville Curry, Esqs., for Interstate Commerce Commission filed.
" 3, " Answer of Interstate Commerce Commission filed.
" 13, " Answer of United States filed.
May 20, 1925. Petition of Central Pennsylvania Coal Producers Association for leave to intervene filed.
" 20, " Certificate as to mailing copies of petition filed.
" 23, " Petition of Pocohontas Operators' Assn. et al. for leave to intervene filed.
" 25, " Argued—witnesses sworn.
" 26, " Hearing continued.
" 27, " Hearing continued.
" 28, " Hearing continued.
" 29, " Hearing concluded.

Nov. 25, 1925. Opinion, Thompson, J., setting aside and annulling and suspending enforcement of order of Interstate Commerce Commission filed.

Dec. 15, 1925. Final decree filed.

Feb. 6, 1926. Assignment of errors by United States and Interstate Commerce Commission filed.

" 6, " Petition for appeal by United States and Interstate Commerce Commission filed.

" 8, " Decree granting appeal of United States and Interstate Commerce Commission filed.

" 8, " Assignment of errors by intervening defendants (Pocohontas Operators' Assn., Empire Coal & Coke Co., & Pocohontas Fuel Co., Inc.) filed.

" 8, " Petition for appeal by intervening defendants (Pocohontas Operators Assn., Empire Coal & Coke Co. & Pocohontas Fuel Co., Inc.) filed.

" 9, " Acceptance of service by attorney general of Penna. of notice of appeal filed.

" 9, " Order of Court granting prayer of petition for appeal of intervening defendants filed.

Feb. 9, 1926. Citation on behalf of intervening defendants' exit.

" 10, " Summons and severance by defendants to intervening defendants filed.

" 11, " Notice of appeal by defendants and acknowledgment of service thereof filed.

" 13, " Citation by United States and Interstate Commerce Commission returned, service admitted, and filed.

" 16, " Præcipe as to transcript of record sur appeal filed.

" 18, " Summons and severance by defendants to the Central Pennsylvania Coal Producers' Assn. and acknowledgment of service thereof filed.

" 25, " Citation by intervening defendants returned, service accepted, and filed.

Mar. 5, 1926. Cert. copy of decree extending time in which to complete appeal filed.

May 10, 1926. Cert. copy of decree extending time to July 9, 1926 in which to file record sur appeal in Supreme Court filed.

July 7, 1926. Cert. copy of decree extending time to Sept. 1, 1926 in which to file record in Supreme Court filed.

" 22, " Statement in narrative form of testimony of plaintiffs' witnesses filed.

1 In United States District Court

[Title omitted.]

Bill of complaint

Filed Mar. 12, 1925

To the honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

I

The corporate names of the plaintiffs herein, their citizenship, and the places of their principal offices are as follows:

2 The Akron, Canton & Youngstown Railway Company, a corporation of Ohio, Akron, Ohio;

Atlanta & West Point Railroad Company, a corporation of Georgia, Atlanta, Ga.;

Atlanta, Birmingham & Atlantic Railway Company, a corporation of Georgia, Atlanta, Ga., and B. L. Bugg, receiver;

Atlantic Coast Line Railroad Company, a corporation of Virginia, Wilmington, N. C.;

Baltimore and Ohio Railroad Company, a corporation of Maryland, Baltimore, Maryland;

Boston & Maine Railroad, a corporation of the States of Massachusetts, New Hampshire, Maine, and New York, Boston, Mass.;

Canadian National Railway Company, a corporation of Canada, Montreal, Que.;

Central New England Railway Company, a corporation of the State of New York, Poughkeepsie, N. Y.;

Central Railroad Company of New Jersey, a corporation of New Jersey, New York, N. Y.;

Chesapeake & Ohio Railway Company, a corporation of Virginia, Richmond, Va.;

Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation of Ohio and Indiana, Cincinnati, Ohio;

Delaware & Hudson Company, a corporation of the State of New York, New York City, N. Y.;

3 Delaware, Lackawanna & Western Railroad Company, a corporation of Pennsylvania, New York, N. Y.;

Elgin, Joliet & Eastern Railway Company, a corporation of the States of Illinois and Indiana, Chicago, Ill.;

Erie Railroad Company, a corporation of the State of New York, New York City, N. Y.;

The Hocking Valley Railway Company, a corporation of Ohio, Columbus, Ohio;

Lehigh Valley Railroad Company, a corporation of Pennsylvania, Philadelphia, Pa.;

Louisville & Nashville Railroad Company, a corporation of Kentucky, Louisville, Ky.;

Michigan Central Railroad Company, a corporation of Michigan, Detroit, Michigan;

Minneapolis & St. Louis Railroad Company, a corporation of Iowa, Minneapolis, Minn., and W. H. Bremner, receiver;

Missouri-Kansas-Texas Railroad Company, a corporation of Missouri, St. Louis, Mo.;

Nashville, Chattanooga & St. Louis Railway Company, a corporation of Tennessee, Nashville, Tenn.;

New York Central Railroad Company, a corporation of the States of New York, Pennsylvania, Ohio, Indiana, Illinois, and Michigan, New York City, N. Y.;

4 The New York, Chicago & St. Louis Railroad Company, a corporation of the States of New York, Pennsylvania, Ohio, Indiana, and Illinois, Cleveland, Ohio;

New York, New Haven & Hartford Railroad Company, a corporation of the States of Connecticut, Massachusetts, and Rhode Island, New Haven, Conn.;

New York, Ontario & Western Railway Company, a corporation of the State of New York, New York City, N. Y.;

Norfolk & Western Railway Company, a corporation of Virginia, Roanoke, Va.;

The Pennsylvania Railroad Company, a corporation of Pennsylvania, Philadelphia, Pa.;

Pere Marquette Railway Company, a corporation of Michigan, Detroit, Mich.;

Pittsburgh & Lake Erie Railroad Company, a corporation of Pennsylvania, Pittsburgh, Penna.;

Reading Company, a corporation of Pennsylvania, Philadelphia, Pa.;

St. Louis Southwestern Railway Company, a corporation of Missouri, St. Louis, Mo.;

Virginian Railway Company, a corporation of Virginia, Norfolk, Virginia;

Wabash Railway Company, a corporation of Indiana, St. Louis, Mo.;

The Wheeling and Lake Erie Railway Company, a corporation of Ohio, Cleveland, Ohio.

5 Plaintiffs are common carriers by railroad subject to the act to regulate commerce and bring their bill of complaint in equity in behalf of themselves and in behalf of such other railroads as have an interest and may by proper proceedings become parties hereto.

II

This bill of complaint is brought for the purpose of enjoining, setting aside, and annulling certain orders of the Interstate Commerce Commission, the first order entered June 13, 1923, and the second

entered December 23, 1924, in a proceeding begun by the commission on its own motion entitled "Assigned cars for bituminous coal mines, No. 12530, In re Distribution among coal mines of privately owned cars and cars for railroad fuel," in so far as said orders relate to the distribution of coal cars, whether of railroad or of private ownership, among bituminous coal mines. All of the railroad plaintiffs herein were parties respondent in said proceeding before the commission.

III

The United States of America is made the defendant in this
6 bill of complaint by authority of the commerce court act (36 Stat. at L. 539) and the district court jurisdiction act (38 Stat. at L. 219).

IV

The said orders were issued in the proceeding hereinafter described.

On March 22, 1921, the commission instituted an investigation upon its own motion by an order as follows:

"ORDER

At a general session of the Interstate Commerce Commission, held a its office in Washington, D. C., on the 22nd day of March, A. D. 1921. No. 12530. In re Distribution among coal mines of privately owner cars and cars for railroad fuel

The matter of the distribution of cars among coal mines being under consideration,

It is ordered that the commission upon its own motion enter upon an investigation into and concerning the reasonableness and propriety of the present car distribution rules in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to prescribing such just and reasonable rule or regulation as may appear to be necessary.

7 It is further ordered that copies of this order be served upon all carriers by railroad in the United States subject to the interstate commerce act, and that notice of this order be given to the general public by depositing a copy of the order in the office of the secretary of the commission at Washington, D. C.

And it is further ordered that this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the commission:

[SEAL.] GEORGE B. MCGINTY,
Secretary."

All of said railroads subject to the jurisdiction of the commission, including all of the railroad plaintiffs herein were made parties respondent in such proceeding before the commission.

On December 16, 1922, the original record in said proceeding before the commission was closed.

On June 13, 1923, the Interstate Commerce Commission issued its report and order, which are reported at 80 I. C. C. 520, and hereby referred to and included by reference in this petition with like force and effect as if set forth in extenso herein, and a true copy of said report and order is hereto annexed and hereby made part of this petition marked Exhibit A.

On or about July 20, 1923, certain owners of private coal
8 cars and certain railroads petitioned for reopening of the case for rehearing and reargument. On October 5, 1923, the commission reopened the proceeding for further hearing upon the petitions for rehearing filed therein. The commission from October 22nd to November 1st, 1923, inclusive, held further hearings; on December 17th, 18th, and 19th, 1923, heard oral argument and received printed briefs upon the questions raised by the petitions for rehearing. Thereupon the case stood submitted and was taken under advisement. Meanwhile, by successive supplemental orders, the commission extended the effective date of its original order from September 1, 1923, to March 1, 1925.

Under date of December 23, 1924, the commission issued its report and order on such further hearing which are reported at 93 I. C. C. 701 and are hereby referred to and included by reference in this petition with like force and effect as if set forth in extenso herein, and a copy of said report and order is hereto annexed and hereby made a part of this petition marked Exhibit B.

V

The railroads of the United States including plaintiffs depend for operation upon a steady supply of suitable coal. About 28% of
9 the total annual production of bituminous coal is required for their operating necessities. There are differences in quality and condition of coals dependent upon mine sources and methods of mining, and there are differences in operating and motive power conditions, which call for selection of coals for dependable production of power under the peculiar conditions affecting each railroad.

VI

Some of plaintiff railroads operate through coal-producing regions and procure their fuel coal from mines on their own lines; others on whose lines no coal is produced get fuel coal from mines on the lines of other railroads. Railroads, including plaintiffs, procure their fuel supply from mines (on or off line) owned out-

right and operated for fuel supply, or from mines (on or off line) controlled by ownership of stock of subsidiary mining corporations, or from mines (on or off line) leased and operated for fuel supply, or from privately owned (on or off line) mines from which the railroad purchase either the entire output or a part of the output. These mine sources are selected with reference to convenience of location for distribution of coal to the places of use and with reference to dependability of volume and quality of output for the individual requirements of the railroad.

10 VII

At irregular intervals and at times that can not be anticipated and provided against and through no fault of plaintiffs, cars currently available for the movement of coal are insufficient for the immediate movement of coal offered for transportation. At such times the railroads, including plaintiffs, have distributed the available cars to all commercial mines (distinguished from total output railroad fuel mines) in proportion to ratings of mine capacity to dig and ship coal. And at such times the necessities for fuel coal of plaintiffs and other railroads frequently exceed the tonnage that could be delivered from the mines from which they draw fuel supply if such mines in making deliveries are restricted to a pro rata share of available cars. Unless plaintiffs are able to obtain coal for their own use they can not operate.

Those of plaintiffs owning or controlling the total output of mines on their own lines have either allotted among commercial mines only the coal cars remaining after a number sufficient to receive indispensable railroad fuel from total output mines have been deducted, or have equipped themselves with coal cars of special design and designation not available for commercial use and placed such cars at such mines in numbers necessary to receive indis-
11 pensable railroad fuel without affecting distribution of coal cars available for commercial shipments. Such total output mines are not rated for proportionate distribution of cars left available for commercial shipments, and receive no such cars. Some of the on-line total output mines are so located that a substantial quantity of their coal is poured direct into the bins of railroad coaling stations or into locomotive tenders without requiring use of coal cars.

Those of the plaintiffs which procure fuel supply by contracts for part of the output of mines on their own rails place enough railroad cars, in such times, at such mines to take the coal necessary for operation. If such railroad fuel cars equal or exceed on given days such mine's distributive share of cars, no more cars are placed there; otherwise only enough cars to make up (including such fuel cars) the mine's distributive share.

Those of the plaintiffs which have no fuel mines on their own lines have procured or set aside a supply of coal cars especially for

fuel. Sometimes such cars are of special design or designation and are not available for common-carrier use. The cars so procured or set aside and designated are tendered to the railroads originating coal for placement at the mines from which the railroad
12 owning the cars has made arrangements for total output or partial output. Many of the railroad plaintiffs originating coal for foreign-line fuel consumption place such cars for their owners at the mines from which their owners have arranged for fuel coal. Where the arrangement of the foreign line is for total output, the foreign-line fuel cars are placed at the designated mine without regard to distributive share, and where the arrangement of the foreign line is for partial output such mines are not given more than enough other unassigned cars to make up their distributive share.

VIII

That as common carriers plaintiffs are required both by obligations devolving upon them under their several charters and by express enactment of the interstate commerce act to provide and furnish transportation upon reasonable request therefor, and in order that they may be enabled to comply with this obligation it is essential that they should be able to procure and to have available at all times coal for the supply of their engines.

In order that they may have such coal available at all times, it is essential that due provision should be made for the purchase of the same from owners and producers of coal and that plain-
13 tiffs should be able to tender cars for the receipt of coal deliverable from the mines they control and from other mines under contracts of purchase and that such cars should be thereafter moved to coaling stations at which the coal is loaded into tenders of the engines. The use of cars for the purpose indicated is essential, and cars so used are not available for common carriage.

By its reports and orders the said commission finds and holds that such use becomes unlawful if thereby the mines furnishing such coal obtain cars for the loading of plaintiffs' fuel coal which they would not have been entitled to receive for commercial shipments, and by said orders plaintiffs have been enjoined from delivering cars at mines for the receipt of fuel coal for which they have contracted unless such cars could have been lawfully placed at said mines for commercial shipments.

The theory upon which this order has been based, as disclosed by the report of the commission, is that the right of plaintiffs to make use of their cars for the purpose above stated is subordinate to the right of shippers to the use thereof, and that when cars currently available are not sufficient to furnish to all shippers the cars desired by them plaintiffs must forego the use of cars which may be necessary to receive and move coal required to enable them to furnish transportation which it is their duty to furnish.

14 Plaintiffs are advised and aver that their duty to furnish transportation generally to all shippers is not subordinate to but, on the contrary, is superior to any obligations devolving upon them in respect to the allotment of their equipment among shippers of any one or more commodities and that any act done by them necessary to enable them to furnish such transportation can not lawfully be regarded and treated as one resulting in undue preference or undue discrimination under section 3 of the interstate commerce act.

As appears from the reports and orders of the commission, the preference and discrimination assumed to result from the placing of cars at mines for the indispensable fuel of plaintiffs are treated as referable only to periods of so-called car shortages, but the circumstances and conditions which are supposed by the commission to give rise to such preference and discrimination exist during periods when cars are available to meet all demands as well as during periods when sufficient cars are not available, and if these circumstances and conditions should operate to control the allotment and placing of cars by your petitioners they should so operate at all times.

The circumstances and conditions in question, as appears from the reports of the commission, are substantially that any in-
15 creased output resulting from delivery of coal to plaintiffs effects a reduction in the cost of mining which enures to the benefit of the owners of the mines in respect to their commercial output and also enables them to secure and retain a better supply of labor than mines are able to do when shipping commercial coal only.

But it must be apparent, and plaintiffs aver as a fact, that whatever benefits, if any, of the character adverted to result to the operators of mines furnishing coal for railroad uses are secured to as great an extent, if not greater, in times when cars are available to meet all demands when the coal trade is apt to be dull as in times when sufficient cars are not available. If these circumstances and conditions give rise to undue preference or advantage or bring about unjust discrimination, the underlying cause is not the placing of cars but the arrangements made for their fuel coal by plaintiffs.

The commission in its reports recognized that the enforcement of its orders will result at times in depriving plaintiffs of an adequate amount of fuel and suggests that when such occasions arise it can treat the situation as an emergency, relieve plaintiffs from the effect of the orders, and give directions for preference or priority to rail-
road fuel. But if, as plaintiffs aver, the orders are unwar-
16 ranted, the expressed willingness of the commission to relieve from their effects at times when the operation of the same will prove hurtful to plaintiffs does not tend to sustain the power of the commission to make orders which must in effect assign priority to placement of railroad fuel cars and revive the preference or discrimination the commission finds undue. Moreover, plaintiffs aver that conditions will doubtless arise which while not sufficient to create

an emergency in a legal sense will require them to withhold deliveries of cars for their fuel supply, and will thus impair their ability to furnish transportation to those desirous of availing themselves of the same.

IX

For many years, and with full sanction of law, shippers of freight owning private cars have tendered such cars for movement over the lines of many of the plaintiffs, which plaintiffs have moved from points of origin to points of destination for the account of such shippers. There are in service on the railroads of the United States over 230,000 private freight cars of all kinds, including box cars, tank cars, refrigerator cars, coal cars, and many other common and special types, and in 1922 there were in operation on the railroads of the United States over 27,000 privately owned coal cars.

17 By said orders plaintiffs are further enjoined from placing private coal cars, if as the result of the placement of said cars the owners thereof would receive cars in excess of the number received by other operators in the same division or district. And plaintiffs aver that when cars are not currently available to meet all demands the effect of this will be to require plaintiffs to retain on side tracks empty cars which would otherwise be used for the shipment of coal and from the transportation of which they would derive substantial earnings.

Plaintiffs have the right to receive and transport private coal cars, whether legally required to do so or not, and many of plaintiffs have been and are willing so to do.

X

Coal cars for receipt of indispensable railroad fuel and private cars have been placed at designated rated mines in excess of the pro rata share of commercial mines under a rule or regulation formulated and prescribed by the Interstate Commerce Commission in 1907, generally known and referred to as the assigned car rule. The assigned car rule at all stages of its development and enunciation by the commission has recognized the right of plaintiff railroads and other railroads of the country to assign cars to railroad fuel

18 mines and to place private cars at mines designated by their owners in excess of the pro rata share of commercial mines.

The assigned car rule thus established and adhered to by the Commission is as follows:

"(a) Assigned cars are of three classes:

"1. System fuel cars; i. e., cars assigned to mines on a coal-loading railroad for the fuel coal of that railroad;

"2. Foreign fuel cars; i. e., cars of another railroad assigned to mines on a coal-loading railroad for the fuel of the former, and

"3. Private cars; i. e., cars not railroad owned assigned to its own or other mines for the coal of the owner of the cars.

"(b) All assigned cars must be placed at mines to which they are assigned.

"(c) If the number of assigned cars equals or exceeds the number of cars to which the mine is that day entitled under the prevailing rate of system car distribution, the mine is not entitled to any system cars for loading that day.

"(d) If the number of assigned cars does not equal the number of cars to which the mine is that day entitled under the prevailing rate of system car distribution, the mine is allowed sufficient system cars in addition to bring its total placement that day up to the distributive share to which it is entitled."

19 The decisions and reports of the Interstate Commerce Commission announcing and prescribing the assigned car rule are as follows: Railroad Commission of Ohio vs. Hocking Valley Ry. Co., 12 I. C. C. 398; Traer vs. Chicago & Alton R. R. Co., 13 I. C. C. 451; Ruttle vs. Pere Marquette R. R. Co., 13 I. C. C. 179; Royal Coal & Coke Co. vs. Southern Ry. Co., 13 I. C. C. 440; Rail & River Coal Co. vs. B. & O. R. R. Co., 14 I. C. C. 86; Hillsdale Coal & Coke Co. vs. P. R. R. Co., 19 I. C. C. 356; In re Private Cars, 50 I. C. C. 652; Assignment of Freight Cars, 57 I. C. C. 760.

The assigned car rule so established and adhered to from 1907 to the commission's orders in this case has been tested by litigation and upheld, and the legislative history of paragraph 12 of section 1 of the interstate commerce act shows the intent of Congress thereby to enact the assigned car rule into statute law and to give it legislative stability, and not merely to require, as the commission holds,

20 that those affected by the provisions of said paragraph should go through the mathematical process involved in counting all cars for placement at mines, leaving open for their determination or for the determination of some tribunal the effect that should be given to such computation in arriving at the number of cars which could lawfully be placed at each mine.

XI

The effect of said orders of the commission is to deprive the railroads, including plaintiffs, of a lawful and effective means of procuring at all times suitable coal for the operation of their railroads in dependable volume.

The discrimination which the commission purports to find in the placement of fuel cars or private cars in excess of the prevailing pro rata distribution is not a discrimination in public transportation facilities or service and is not within the provision of the act condemning unjust discrimination and undue preference. As to the railroad fuel cars of plaintiffs and other railroads the commission's orders forbid as discriminatory the use of coal cars designated and assigned to carry a commodity "necessary and intended for" their "use in the conduct" of transportation. Such designation and

assignment are necessarily contemplated by subdivision 8 of
21 section 1 of the interstate commerce act, popularly known as the commodities clause. The restrictions imposed upon the use of private cars by the orders of the Interstate Commerce Commission operate to reduce the number of coal cars available for transportation and to deprive plaintiffs of the freight revenue therefrom to the extent that such cars may not be placed at mines designated by their owners in excess of a prevailing pro rata allotment of system cars.

XII

Plaintiffs aver that said orders of the commission are unlawful and void upon the following grounds:

(a) They are based upon an erroneous conception of the commission's powers, either under paragraph 12 of section 1 or under any other section of the interstate commerce act, and are beyond the scope of the authority conferred upon the commission.

(b) Their primary purpose is to remedy what the commission conceives to be evils in the coal industry and they assume to regulate such industry over the regulation of which the commission has no power.

(c) They are arbitrary and unreasonable and involve the assumption of legislative and other powers not delegated to the commission.

22 (d) They will, if enforced, unlawfully deprive plaintiffs of the right to operate owned or controlled fuel mines and contract for fuel coal and to enforce performance of such essential contracts, and will deprive plaintiffs of the use of their owned and controlled fuel mines and of the benefit of such private coal car equipment as may not be placed at mines designated by their owners.

Wherefore plaintiffs and each of them pray:

(1) That this court adjudge, order, and decree that the report and order of the Interstate Commerce Commission of June 13, 1923, and its further report and order of December 23, 1924, in so far as said orders compel an absolute pro rata distribution of coal cars, whether of railroad or of private ownership, among bituminous coal mines, and without regard to the prior necessities of the railroads for fuel coal, and without regard to the ownership of private cars, are beyond the authority of the commission and are without warrant in law and null and void, and that said reports and orders be set aside and annulled.

(2) That this court adjudge, order, and decree that said reports and orders of June 13, 1923, and of December 23, 1924, in so far as they prohibit the placing, loading, or hauling to the places of
23 railroad fuel consumption of railroad fuel cars at the mines designated by their railroad owners in excess of the percent-

age of distribution of system coal cars to which such mines would be entitled in times of car shortage are beyond the authority of the Interstate Commerce Commission and are without warrant in law and null and void and that said reports and orders be set aside and annulled.

(3) That this court adjudge that said reports and orders of June 13, 1923, and December 23, 1924, in so far as they prohibit the placement for loading of coal cars of private ownership at the mines designated by their owners in excess of the percentage of distribution of railroad coal cars to which such mines would be entitled in times of car shortage are beyond the authority of the Interstate Commerce Commission and are without warrant in law and null and void and that said reports and orders be set aside and annulled.

(4) That this court grant unto railroad plaintiffs writ of subpœna directed to defendant United States of America commanding it on certain day therein to be specified to be and appear before this court and then and there full, true, and complete answer make to all and singular the premises and to perform and abide by such order and decree herein as this court shall deem meet and agreeable to equity and good conscience.

24 (5) That this court direct that due and proper notice of this petition be served forthwith on defendant herein as in said district court jurisdiction act provided.

(6) That this court upon final hearing of this suit enter a decree herein enjoining, setting aside, annulling, and suspending said orders of the Interstate Commerce Commission and enjoining the enforcement of the said orders.

(7) That the railroad plaintiffs and each of them may have such other and further relief in the premises as to equity may appertain and as may be deemed by this court fit and proper.

F. M. Rivinus,
For Plaintiffs,
1201 Commercial Trust Building, Philadelphia, Pa.
Henry Wolf Biklé,
W. S. Bronson,
Francis I. Gowen,
W. L. Kinter,
W. A. Northcutt,
C. C. Paulding,
Theodore W. Reath,
C. M. Sheafe, Jr.,
Of Counsel.

March, 1925.

25 [*Duly sworn to by Agnew T. Dice; jurat omitted in printing.*]

26-27 In United States District Court

[Title omitted.]

Answer of the United States

Filed April 13, 1925

United States of America for answer to the bill of complaint filed herein against it says:

I, II, III, IV. On information and belief defendant admits the facts alleged in Paragraphs I, II, III, and IV in manner and form as alleged.

V, VI, VII, VIII, IX. Defendant has no knowledge of the matters and things alleged in Paragraphs V, VI, VII, VIII, and IX; it neither admits nor denies the same, and in so far as they may become material upon the hearing it will require strict proof thereof.

X. Defendant has no knowledge of the matters and things alleged in Paragraph X; it neither admits nor denies the same, and in so far as they may become material upon the hearing it will require strict proof thereof, with this exception: Defendant admits, subject to verification, the commission made and published the eight reports which are identified by the titles thereof.

XI. Defendant denies the matters and things alleged in Paragraph XI and each and every part of the same in manner and form as alleged and all of the inferences sought to be created thereby.

XII. Defendant denies the matters and things alleged in
28 Paragraph XII and each and every part of the same in manner and form as alleged and all of the inferences sought to be created thereby.

Further answering, defendant alleges that the matters and things set forth in the bill of complaint and sought to be put in issue before the court were all before the Interstate Commerce Commission were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the interstate commerce act; in its reports in writing with respect thereto, made after full hearing and on due notice to all of the parties, which state its conclusions, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence before the commission of which the parties were advised.

Defendant alleges that the facts set forth in the reports of the commission and each and all of the same are true and correct.

Defendant specifically denies—

(a) Any fact or facts alleged in the bill of complaint, or any part of the same, which deny, or which seek to deny, any fact or facts found by the commission.

(b) Any fact or facts alleged in the bill of complaint, or any part of the same, which are inconsistent with any fact or facts found by the commission.

(c) Any and all inferences of fact from any particular fact or facts alleged in the bill of complaint, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the commission.

(d) Any fact or facts alleged in the bill of complaint, or any part of the same, which set up, or which seek to set up, matters and things which were not before the commission.

(e) Any fact or facts alleged in the bill of complaint, or
29 any part of the same which attack or which seek to attack the action of the commission, and to show facts other than what the commission has found and declared.

(f) Any allegations in the bill of complaint, or any part of the same, which allege that facts were found by the commission in its reports and orders which, as shown on the face thereof, were not so found.

(g) Any conclusions of law alleged and insisted upon in the bill of complaint, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission.

(h) Each and every allegation in the bill of complaint contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
GEORGE W. COLES,
United States Attorney.

30 [*Duly sworn to by Blackburn Esterline; jurat omitted in printing.*]

31 In United States District Court

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed Apr. 3, 1925

To the honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the

Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

P. J. FARRELL,
R. GRANVILLE CURRY.

32 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed Apr. 3, 1925

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs I to III, inclusive, of the bill of complaint, the commission admits, for the purposes of this suit, that the allegations of fact therein contained are true.

II

Answering Paragraphs IV to XII, inclusive, of the bill of complaint, the commission admits the allegations contained in Paragraph IV, except that in fact the proceeding referred to in said paragraph was reopened on October 9, 1923, instead of October 3, 1923, as alleged. The commission further alleges that in said proceeding it accorded to the parties thereto the full hearings provided for in section 15 of the interstate commerce act; that at said hearings a large volume of testimony and other evidence bearing upon the matters covered by the order of March 22, 1921, referred to in said paragraph, was submitted to the commission for consideration, on behalf of the parties to said proceeding and of others, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the commission for determination; and that the commission determined said matters and made and entered, and served upon all the parties to said proceeding, its report and order of June 13, 1923, and its supplemental

report and order of December 23, 1924, which are referred to in said Paragraph IV and which included the commission's decisions, conclusions, orders, and requirements in the premises.

The commission further alleges that, in said report and
33-34 order of December 23, 1924, it affirmed its findings of unreasonableness, undue prejudice, and undue preference contained in said report of June 13, 1923.

The commission further alleges that said findings and conclusions were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report and order of June 13, 1923, and said supplemental report and order of December 23, 1924, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings, by their respective counsel, and all matters called to its attention by plaintiffs herein.

The commission further alleges that said order of June 13, 1923, as modified by said order of December 23, 1924, was not made or entered by it either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner and the commission denies each of and all the allegations to the contrary contained in said bill of complaint.

In particular the commission denies that irreparable injury or legal injury of any kind will result to plaintiffs, or any of them, if said order of June 13, 1923, as modified by said order of December 23, 1924, is not enjoined and set aside as prayed for by plaintiffs.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said bill of complaint, in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of June 13, 1923, as modified by said report and order of December 23, 1924, which said reports and orders are hereby referred to and made a part hereof.

All of which matters and things the commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By R. GRANVILLE CURRY,
Assistant Counsel.

P. J. FARRELL,
Of Counsel.

[*Duly sworn to by Clyde B. Aitchison; jurat omitted in printing.*]

35–42 [Omitted in printing.]

43 In United States District Court

[Title omitted.]

Petition of Pocahontas Operators' Association, Empire Coal & Coke Company, a corporation, and Pocahontas Fuel Company Incorporated, a corporation, for leave to intervene

Filed May 21, 1925

To the honorable the Judges of the United States District Court for the Eastern District of Pennsylvania, sitting in equity:

Come now the Pocahontas Operators' Association, the Empire Coal & Coke Company, and the Pocahontas Fuel Company Incorporated, and respectfully represent that the petitioners, and each of them, have an interest in the matters in controversy in the above-entitled proceeding, and desire to intervene in and to become parties to said proceeding, and for grounds of the proposed intervention say:

The petitioner, Pocahontas Operators' Association is an unincorporated, voluntary association, the membership of which is made up of numerous corporations, some of them chartered, organized, and doing business under the laws of the State of West Virginia, and some of them chartered, organized, and doing business under the laws of other States, and all of which are engaged in the business of mining and shipping coal in the States of West Virginia or Virginia, said association being organized for the purpose of doing the work ordinarily done by trade associations in connection with preserving and promoting the general interests of its members.

The petitioner, Empire Coal & Coke Company, is a West Virginia corporation engaged in the business of mining and shipping coal in the State of West Virginia.

The petitioner, Pocahontas Fuel Company Incorporated, is a Virginia corporation engaged in the business of mining and shipping coal in the States of West Virginia and Virgina.

All of the members of the said Pocahontas Operators' Association, including the said Empire Coal & Coke Company and the Pocahontas Fuel Company Incorporated, are served by the Norfolk & Western Railway Company, both in the State of West Virginia and in the State of Virginia.

The principal offices of the petitioners are as follows: Pocahontas Operators' Association, Bluefield, W. Va.; Empire Coal & Coke Company, Landgraff, W. Va.; Pocahontas Fuel Company Incorporated, Boissevain, Va.

Petitioners file this petition in their own behalf, and also on behalf of all of the other members of the said Pocahontas Operators' Association. The questions involved in this case are of common and general interest to all of said members of said association. Such members constitute a class so numerous as to make it impracticable to bring them all before the court, and these petitioners file this petition on behalf of the whole.

44

Petitioners, and those on whose behalf this petition is filed, have an interest in the matters in controversy in this cause by reason of the fact of the mining and shipping of coal by them on the line of the Norfolk & Western Railway Company, as aforesaid, in which business the method and manner of distribution of coal cars to their mines by said railway company is of great importance, and particularly because their lawful car supply will be directly and unlawfully limited and restricted by the number of cars assigned by said railway company to the mines furnishing it with fuel, and said lawful car supply will likewise be directly and unlawfully limited and restricted by the assignment of privately owned cars by said railway company in the way and manner, in each instance, alleged in the bill of complaint to be within the right and authority of the said railway company to assign them, to the great injury and damage of these petitioners.

Pocahontas Operators' Association, on behalf of all of its members, including said other petitioners herein, appeared before the Interstate Commerce Commission, by counsel, in the proceeding begun by the commission on its own motion, entitled "Assigned cars for bituminous coal mines, Docket No. 12530, in re Distribution among coal mines of privately owned cars and cars for railroad fuel," mentioned and referred to in the bill, and cross-examined witnesses, introduced evidence, filed their brief, and presented oral argument before the commission against the contentions of the carriers and plaintiffs in this suit, that said carriers had the right to distribute their own cars for their own fuel purposes, and to distribute privately owned cars in the way and manner claimed to be their right in the bill herein. These petitioners are therefore proper parties defendant in this suit.

Wherefore these petitioners pray:

(a) That leave be granted them to intervene and to be treated as parties defendant herein, and that leave be granted them to file an answer to the bill herein, with the right to have notice of and appear at the taking of testimony, to produce, examine, and cross-examine witnesses, and be heard in person or by counsel upon brief and in oral argument.

(b) That this court order that due and proper service of this petition be forthwith made, by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice, as in the district court jurisdiction

act provided, and by serving a copy hereof upon each of the complainants herein.

And your petitioners as in duty bound will ever pray, etc.

GREEVER & GILLESPIE,
Solicitors for Petitioners.

E. L. GREEVER,
Of Counsel.

May, 1925.

45–46 [*Duly sworn to by Wm. C. Atwater et al.; jurat omitted in printing.*]

47 In United States District Court

[Title omitted.]
[File indorsement omitted.]

On final hearing

Statement in narrative form of the testimony of plaintiffs' witnesses

Filed July 22, 1926

F. M. Rivinus, Henry Wolf Biklé, Francis I. Gowen, W. A. Northcutt, W. S. Bronson, C. C. Paulding, Theodore W. Reath, and C. M. Shaefe, jr., for the plaintiffs.

Blackburn Esterline, assistant to the Solicitor General, for United States; R. Granville Curry for Interstate Commerce Commission; E. L. Greever for Pocahontas Operators' Association et al., intervenors; and A. M. Liveright for Central Pennsylvania Coal Producers' Association, intervenor.

MAY 25, 1925.

Pennsylvania Railroad Company. JOHN F. DEASY sworn.

(D. ex. Mr. BIKLÉ.) Resides at Lansdowne, Pa. Assistant chief of transportation in charge of freight, Pennsylvania Railroad. In that position am in contact with and in charge of distribution
48 and supply of coal cars. (5) For the movement of its trains the company uses approximately 15,700,000 tons of coal a year, which it secures from mines located on its lines, except about one-half of one per cent, which it secures from mines located on foreign railroads. It obtains this coal from the mines through negotiations and purchases, and after that it places cars at the mines and transports the coal to the points of consumption in its own cars. There are about 1,450 mines producing bituminous coal located on the Pennsylvania Railroad. Coal is also procured by other railroads from these mines. (6) (Mr. ESTERLINE.) Objection is made to the testimony of the witness, and to each and every exhibit or document before and at the time the same are offered and received and to each

and every part of the same, and to each question propounded and to each answer given, upon the ground that the complainants are seeking to offer evidence before the court de novo and thus to put before the court evidence which was not before the commission and which the commission had no opportunity to hear and consider, that the complainants may make a case before the court to enjoin, set aside, annul, or suspend the order of the commission in controversy here on a record of evidence and proceedings other than and different from the original record of the evidence and proceedings before the commission and on which the commission based its order. Request is made that this objection shall be made to apply to the whole of the testimony given and to each question and answer as and when the same is asked and given without the repetition of such objection when each question is asked and the answer is given. (Mr. BIKLÉ.) I have no objection, of course, to the objection being so considered. We are not seeking in any way to bring before this court any considerations to show the wisdom or the unwisdom of the order of the commission. We expect to stand squarely on the opinions and reports of the commission as to what we believe to be the basis for our contention that it passes beyond the commission's powers. The sole and exclusive purpose of this testimony is to show this particular railroad is affected in a definite way by the order. (7) (The COURT.) We will rule this testimony in on the tender which has been made giving the purpose of the testimony, noting an exception for
49 the respondents, and then if it is desired to attack our ruling during your argument we will consider it.)

(The WITNESS.) Some of the principal railroads which so procure their coal from mines on the Pennsylvania Railroad are the New York, New Haven & Hartford, Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson, Canadian Pacific, Grand Trunk, Central Railroad of New Jersey, New York, Ontario & Western, and a few others. In obtaining their coal they first negotiate a purchase at the mines located on our railroad and after having notified us of that fact they send their cars to our railroad for the accommodation of the coal. (8) The cars are placed at the specific mines from which they have purchased the coal. There are cars owned by shippers that ply over our rails. We have approximately 24,000 open-top cars of private ownership belonging to shippers or to receivers of freight that operate on our railroad. The cars that I refer to operate in the coal business chiefly. (Tr. 9.) Important instances of that private ownership in terms of numbers of cars are: Berwind-White Coal Mining Company operates 2,947 cars, Bethlehem Steel Company operates 3,921 cars, Frick Coal Company operates 1,314 cars, Pennsylvania Coal & Coke Company operates 1,000 cars, and Westmoreland Coal Company operates 1,870 cars. Those cars are moved and placed by the railroad company at the mines designated by the owners. There are times on the railroad when there are not cars sufficient to meet the needs and demands of the

shippers. (Plaintiffs' Exhibit 4, Pennsylvania Railroad System T. D.–P. S. C.–Pa. No. 3, Rules governing the distribution of cars for coal and coke, offered in evidence.)

(Ex. The COURT.) Those are the rules which were in effect prior to the date of the order of the commission. The rules now promulgated are different. (Ex. Mr. BIKLE.) Before March 1, 1925, the mines were rated on their ability to produce and ship coal in a working-day. During periods of car shortage the number of cars to be placed at mines is determined by the relationship that the number of cars available bears to the aggregate rating. In this way a percentage of distribution is computed. The cars sent to our line for the accommodation of fuel for foreign railroads, private cars, and
50 cars placed for Pennsylvania Railroad fuel are placed for loading at the mines involved regardless of the prevailing percentage of distribution. That is under the ruling obtaining before March 1, 1925. If the three classes of cars so placed equal or exceed the prevailing percentage of distribution at the mines involved on any day, such mines receive no additional cars. If, on the other hand, the total number of private cars, cars for foreign fuel, and cars placed for Pennsylvania Railroad fuel is less than the prevailing percentage of distribution, such mines are given a sufficient number of additional empty cars to equal the prevailing percentage of distribution. (Tr. 10.) That method of distribution would be changed by the commission's order which is involved in the exhibit already filed. Under the order of the commission, as we interpret it, cars may not be placed on the assigned basis or may not be placed in excess of the distributive share. Instead of placing cars in preference for the accommodation of fuel coal, as was the case contemplated under the original rules, such procedure could not be followed under the contemplated decision. Under the commission's requirement, the limit to which we could place any of these three classes of cars that have been specifically described would be the prevailing percentage of distribution; they could not be placed in excess of that (Tr. 11), no matter of which class they were and no matter whether we had cars of several classes. The Pennsylvania Railroad's fuel supply is procured through contracts for total output and partial output of given mines. That company is desirous and willing to continue to move coal in privately owned coal cars. (Tr. 12.)

(X-ex. Mr. CURRY.) In working out the per cent on the Pennsylvania Railroad and in distributing the cars, the percentage of a particular mine on a particular day is ironed out on a system of overs and shorts. Mathematically it is entitled to it every day, but you can not always place exactly the number of cars it is entitled to. If it does not get the number of cars it is entitled to on a particular day, it is given a shortage, and if it gets more it is given an overage, and that is adjusted as promptly as it is practical to do it afterwards. If applied with mathematical strictness, the percentage

would involve fractions of cars.) (Tr. 12.) (X-ex. Mr.
51 LIVERIGHT.) In applying mine ratings to cars available the cars comprehended within the term "available" are cars which were available to place at given mines, depending upon the use to which they are put. (Tr. 13.) For instance, foreign-railroad fuel cars would be available for foreign-railroad fuel; private cars would be available for loading private-company fuel or placement at the mines to which they are assigned. In making up our daily percentages in times of shortage, all of these classes of cars are not regarded as component parts of the car pool, but they are assigned to the special service for which they are moved to that territory. In the first percentages all classes of cars are included.

Chesapeake & Ohio. J. W. DAVIN sworn. (D. ex. Mr. RIVINUS.) Resides in Huntington, W. Va.; assistant superintendent of transportation for the C. & O., whose annual consumption of bituminous coal for motive power is between two and a half and three million tons, which is secured from the mines on our system. (Tr. 14.) We own three mines which produce approximately 30 per cent of the fuel consumed, and we made contracts for a period of three years to secure the other 70 per cent by taking the total output from seven mines. Our entire fuel supply is covered by contracts for the total output of mines. Several other railroads procure bituminous coal on the line of the C. & O., among them the Pere Marquette, Atlantic Coast Line, Seaboard Air Line, Canadian National, and the Big Four. These make provision for cars to receive that coal, and they have billed their cars direct to the mines from which they secure the output for a period of six months or longer. Only in cases where a period of six months' output exists do they bill their cars direct to the mine. (Tr. 15.) Private coal cars are operated on the C. & O.: Berwind-White Company, 1,000; McKinner Steel Company, 500; Youngstown Sheet & Tube Company, 500, and the Steel & Tube Company of America, 500. (The objection made by counsel for the Government to the testimony of the preceding witness was entered to the testimony of this witness and made a matter of record. The objection was overruled by the court and an exception allowed.) The practice of distributing coal cars on the C. & O. prior to the effective date of the order of the commission was that private cars and foreign railroad cars assigned for foreign railroad fuel coal at mines on our line were supplied to the mines in accordance with special rules which we had in effect, which, during periods of
52 car shortage, enabled the private car mine and the foreign railroad fuel mine to secure a hundred per cent car supply of either foreign cars or private cars if they were available. If they were not available and the supply of either private or foreign fuel cars was below the average supply of system equipment, they were entitled to receive sufficient system equipment to bring their supply up to the average system supply on that day. The practice is substantially the same as that described by Mr. Deasy for the P. R., so

far as private and foreign railroad fuel cars are concerned, but we did not assign our own cars for our company fuel because the mines that we own and the mines that we had contracts with did not ship coal. (Tr. 16.) As to C. & O. cars for receipt of C. & O. fuel from mines of which we took the entire output, we did not rate those mines but supplied them sufficient cars to take care of their entire output regardless of percentage distribution. The effect of the new ruling of the commission on the practice I have described as to these three classes of cars, it requires our prorating all cars to all mines on the same basis which would prevent in all mines any excess of the average supply on any given date. If that supply could only take care of 50 per cent of the output, the rest would have to remain idle, which, for instance, would mean half time at our three mines. The remaining C. & O. cars which could not be placed at our own mines would be thrown into the general pool for distribution, and foreign railroad fuel cars would be handled in the same manner, and any surplus foreign railroad fuel cars or private cars in excess of the average supply would have to remain idle. (X-ex. Mr. LIVERIGHT.) Our mines never ship coal commercially during any shortage period. (X-ex. Mr. BRONSON.) The C. & O. fuel mines never ship coal commercially. (Tr. 17.) In that event, when the C. & O. was prohibited by this ruling from furnishing more than 50 per cent to that mine, the mine would have to remain idle. C. & O. mines are manned by C. & O. employees. (Tr. 18.) (X-ex. Mr. LIVERIGHT.) I have never heard of a rule that prohibits the use of surplus foreign railroad fuel supply cars in general distribution under such circumstances as I have described, but it has never been the practice. I testified as a witness before the commission in case Docket No. 12530, and my testimony there on the same subject, relating to the practice before the effective date of the commission's
53 order, was substantially the same as that given here. (Tr. 18.)

Baltimore & Ohio Railroad. JOHN W. NEESNER sworn. (D. ex. Mr. RIVINUS.) Resides at Baltimore. General supervisor of mine ratings, B. & O. For motive power fuel B. & O. uses approximately 6,500,000 tons of bituminous coal a year, which is produced principally along its railroad. B. & O. purchases the coal mostly on entire-output contracts from private mines. (Tr. 19.) We own or control mines, but we have not been getting any fuel from them. It is a very small proposition and don't amount to anything. We get our fuel mainly from commercial mines on total-output contracts. Railroads other than our own procure their fuel supply from mines on the B. & O., including New York, New Haven and Hartford, Lehigh Valley, Philadelphia and Reading, Central Railroad of New Jersey, and Nickel Plate. In providing for the receipt of their coal in cars, these foreign railroads notify us when they place an order for coal with a mine on our railroad. Then arrangements are made by them to send the cars for that purpose. All this is done in advance. (Mr.

ESTERLINE.) The same objection is made that was made to the testimony of the preceding witnesses, and request is also made that the same objection may be made to apply to the testimony of any witness that may follow the witness who is testifying without the repetition of the objection. (Tr. 20.) (The COURT.) In order not to repeat the objection to the testimony of each witness, the request is granted, and it will be considered that objection has been made to the testimony of each witness, that the objection was overruled, and on each ruling of the court an exception was noted. (Tr. 21.)

(Mr. NEESNER.) With the exception of the Reading Railroad the cars are carded to the mines at which this fuel coal is to be loaded. (Ex. The COURT.) By carded direct I mean there is a card goes with the car. So far as the Reading is concerned there is a big interchange between the B. & O. and Reading. What I mean to say is there is a whole lot of coal loaded on the B. & O. for Reading points, and the Reading sends us cars for commercial loading as well as their fuel, so that we take out what is required for the Reading fuel and distribute the balance of the Reading cars for commercial
54 loading for points on the Reading. (Ex. Mr. RIVINUS.) We have private coal cars on the line of the B. & O. that are loaded at mines on its lines. (Tr. 21.) These include Bethlehem Steel Corporation cars, Quemahoning Coal Company cars, Youngman Coal & Coke Company, and possibly a few others that I can not think of now. As to the practice of the B. & O. with regard to distribution of these three classes of cars, that is home-line fuel, foreign-line fuel, and private cars in times of car shortage prior to the effective date of the commission's order, will say that private cars were placed at the mines to which they were ordered placed by the car owners or the party who controlled the cars. Cars sent by foreign railroads for their fuel coal were placed at the mines to which they were carded or at which we were directed to place them by the car owner. The latter would be the case of the Reading. (Tr. 22.) Cars for B. & O. fuel coal were placed at the mines which were furnishing the fuel coal for the B. & O. That is as without regard to the prevailing percentage in times of car shortage provided in the case of foreign railroad fuel cars, B. & O. fuel cars, that the output of the mine was contracted for for a period of six months for railroad fuel. Our practice was a little different from that of the Pennsylvania Railroad that Mr. Deasy has described. I did not hear all of his testimony, but we were working largely under the rule laid down in service order No. 18, which provided that cars could not be placed at a mine on an assigned basis. With that limitation it is in general features the same as the Pennsylvania. The effect of the order on our former practice would just simply mean this, that we would have to scatter our fuel orders among a larger number of mines. As to what we physically can or cannot do under the commission's order that we could do before, will say, for instance, in the case of the Bethlehem Steel Company, that they have

enough cars to run, we will say, their two mines in the Fairmount district full on a given day or right along. Under the order of the commission (Tr. 23), if the general car supply in the district was only 50 per cent, we would only be able to give the Bethlehem mines 50 per cent of their own cars and hold the balance of the 50 per cent out. (Ex. The COURT.) As to our right to use for any purpose the balance of the cars we hold out, I don't think we could
55 without the permission of the owners of the cars in that case. (Ex. Mr. RIVINUS.) With cars particularly carded by a foreign railroad to a special mine for that foreign railroad's fuel, the same thing would happen with the excess over the pro rate unless we could get permission to use the cars for other shipments. As to our own line fuel, we could only place the percentage at our total output mines and the rest would have to go into the general distribution. (Ex. Mr. ESTERLINE.) I think that my latter statement is the general construction placed by evrybody upon the order of the commission. (Tr. 24.)

Cleveland, Cincinnati, Chicago & St. Louis Railway. R. R HARRIS sworn. (D.-ex. Mr. RIVINUS.) Resides at Indianapolis. Superintendent of freight transportation of the Big Four, which uses approximately 2,400,000 tons of bituminous coal a year for motive power. (Tr. 25.) About two-thirds of that coal is produced on the Big Four and one-third on foreign lines. The contracts are made by our purchasing department of the coal department and in the past, in times of car shortage, they would contract for periods taking the entire output of certain mines, and ordinarily they try to spread their orders as much as possible to all commercial mines that get out the class of coal suitable for their locomotives. Sometimes we place the contract for the total output and sometimes for less than the total output. That is more particularly true to on-line mines, but in the past, from information I have from our purchasing department, they have made contracts at times for the entire output of mines on foreign railroads. From mines on-line with which we have contracts we receive the coal direct in cars from the mine tipples. In procuring coal from mines on the lines of other railroads we furnish our own cars for the loading of that coal. We bill them in most instances direct to the mine and in a sufficient quantity to take away what we have contracted for. (Tr. 26.) The New York Central and Michigan Central get some of their coal from the mines on the Big Four. They make provision for cars to receive that coal. In coming to us, the cars of the M. C. come billed to the individual mines with whom they have contracts, and the cars of the N. Y. C. come to us in such numbers that we make the distribution from one common point after they reach our rails. We have no private cars on the lines of the
56 Big Four for loading on the Big Four, but we have through our intermediate lines. They come over our lines, but we

are not concerned with them. (Tr. 27.) Prior to the effective date of this order of the commission our practice of distribution of home-line fuel cars and foreign-line fuel cars on the Big Four in times of car shortage was (Tr. 27) that when we had contracts from our own company or foreign railroads had contracts for the entire output of certain mines for six months we give a whole day's run of cars for loading this fuel coal on for all days that they worked in the mines and they were, in a sense, taken out of distribution in so far as their rating in the distribution of cars was concerned. They were not only taken out of distribution for the cars that were assigned if the cars that were assigned to those mines exceeded the percentage prevailing at the time, but they were taken out anyway. (Tr. 28.) That is, if they had just the even number of cars for the day's run, we took them out of the distribution for the entire period covered by the contract, and if the foreign-line fuel cars or private cars did not reach the prevailing percentage then we could give that mine additional system cars sufficient to bring it up. As to foreign-line cars and home-line cars, our practice, generally speaking, is the same as that of the Pennsylvania Railroad, and I think it is practically the universal practice of all of them. (Tr. 28.) As I understand it, that practice would be prevented by the order of the commission.

Erie Railroad. J. J. MOYNIHAN sworn. (D.–ex. Mr. RIVINUS.) Resides at South Orange, N. J. Superintendent of transportation of the Erie Railroad, New York. The fuel for motive power of the Erie is bituminous coal with a small mixture of anthracite on the east end of the railroad. The total consumption of bituminous coal runs between three and three and a half million tons per year, and approximately 56 per cent is procured on-line and 44 per cent off-line. (Tr. 29.) About 98 per cent of the on-line coal is procured from mines owned and controlled by the railroad. The off-line coal is procured under contract from producers on other railroads. As to total output or partial output contracts as to that coal that comes from other railroads, our contract makes no mention as to whether it shall be total or partial output. (Tr. 30.)

57 Railroads other than our own do not secure fuel from mines on the line of our railroad. The bituminous-coal production on the Erie, other than from mines owned and controlled by the Erie, is less than 5 per cent of the total. (Tr. 30.) As to cars for receipt of the coal which comes from mines on other railroads, the railroads on which this coal is produced accept our equipment and take it to the mines and return it with the coal under our contracts. In some cases we bill them direct to the mine that produces the coal and in other cases we turn the requisite number of cars over to the railroad at the junction and they distribute them to the mines without our billing them straight to the mines. (Tr. 30.) We designate though to the foreign line where we want those cars

to go. We give them the program. It is a slight difference in procedure, but the final result is the same. No private coal cars are loaded on the line of the Erie. Prior to the effective date of this order, our practice in regard to the receipt of Erie fuel when from mines on the line of the Erie was that the Erie cars were placed at mines producing Erie fuel during times of car shortage in preference to commercial requirements, but, as I have stated before, the commercial requirements of mines on the Erie are very small proportionately. (Tr. 31.) On account of the commercial production being less than five per cent of the total on the Erie, we have never set up an elaborate system of ratings of mines, but it was our practice before the effective date of this order to place sufficient cars for Erie fuel in preference to the commercial orders. We endeavored to carry the commercial orders with them. We tried to give them a fair show and at the same time keep up our railroad going with sufficient fuel. (Tr. 31.) As to whether there is anything in this commission's present order which would prevent us from doing what I said we did before the order came out, the commission's order would not affect us materially on our own railroad. (Tr. 32.) As to whether it would affect us at all, it would affect us in getting our fuel from off-line, the 44 per cent of it. Of course, we have not been through it, but we anticipate that the other railroads not being privileged to take our cars to place them at designated mines and load them with our fuel and our fuel only, the result would be, during times of an extreme car shortage and runaway coal market, we would stand a mighty poor show of getting our fuel supply
58 from foreign railroads. The foreign railroads from which we get that percentage in the main are the Pittsburgh & Shawmut, B. & O., and T. & O. C. lines of the New York Central. They represent the majority of them. (Tr. 32.)

(X-ex. Mr. Liveright.) I was a witness before the commission in the last hearing and took the stand and gave testimony. (Tr. 32.) It was substantially the same as I am giving here in so far as the questions compare as to the practice in effect before the date of this order.

Hocking Valley Railroad. J. T. Fitzgerald sworn. (D.-ex. Mr. Rivinus.) Superintendent of Transportation, H. V. R., which uses bituminous coal as fuel for motive power, all of which is procured on its own line. (Tr. 33.) H. V. contracts for that coal from partial output mines and contract mines in cars specially constructed for our fuel. The distinction means that contract mine is where you take the output of the mine for a period of six months or more. The mines are not owned by the H. V. For the receipt of that coal we have built 350 cars of special construction known as X cars and they are shown in our working equipment. They are not a general service car, as they are especially equipped as a side dump car. There are very few of them used in general service, and we reserve

them for our fuel loading alone and do not permit them to be loaded with any other than fuel coal. At times railroads other than our own procure their fuel supply along the line of the H. V., but not to any large extent. When they do they bill the cars direct to certain mines on the H. V. (Tr. 34.) No private coal cars operate on the H. V. Prior to the time of this order our method of distributing cars on the H. V. in times of shortage was generally the same as the C. & O. and P. R. R. In some respects that practice would be absolutely prevented by the commission's orders. (X-ex. Mr. LIVERIGHT.) The practice I have outlined is practically the same as the commission has detailed and described in its reports at page 710. (X-ex. The COURT.) Under the present order we would be unable to place the specially equipped cars at our mines beyond their prorate share of cars. (Tr. 35.) (X-ex. Mr. CURRY.) We have been using these 350 side dump cars since 1916.

59 Louisville & Nashville Railroad. R. C. PARSONS, sworn. (D.-ex. Mr. RIVINUS.) Assistant to the superintendent of transportation, L. & N., Louisville. L. & N. uses approximately 4,000,000 tons of bituminous coal every year for motive power. That coal is procured entirely from mines located on its own rails. L. & N. contracts for practically all of it on the entire output of the mine basis. (Tr. 36.) We have several foreign line railroads procuring fuel coal on the rails of the L. & N., including the Big Four, Atlantic Coastline, Seaboard Air Line, Georgia road, and others. For receiving that coal their own system cars are specifically billed to the individual mines from which the coal is secured. (Tr. 37.) On the line of the L. & N. there are approximately 3,500 private line coal cars in service—United States Steel Company, 2,000; Fordson Coal Company and Ford Motor Company, 1,000; Wisconsin Fuel Company, 300; and the Coppers Company, 200. In distributing these three classes of coal cars for home line fuel, foreign line fuel, and private coal cars prior to the time of the commission's order it was the practice, so far as the L. & N. is concerned in securing its own fuel, to contract for the fuel output of the mine for periods of twelve months. (Tr. 37.) When that was done, our own system cars were supplied to such mines on the assigned basis. Those mines were not permitted to ship coal commercially. In other words, the entire output of the mine was shipped to the L. & N., and we supplied our own system cars, 100 per cent, to the mine each day that it worked. As to foreign line fuel cars before this order, in our negotiations with foreign line railroads with mines located on our rails we required the foreign line to give us a copy of their contracts. Among the requirements were that they must contract for the output of the mine for a period of six consecutive months or more. That being the case then the foreign line railroad would bill these cars to the mine from which it was to secure the coal and the cars would be assigned to that mine in exactly the same manner as we assigned our own system cars. We placed the foreign line fuel

cars as billed. (Tr. 38.) With respect to private line coal cars, they were transported and placed at the mines to which the owners directed, who owned the cars—that is, the cars were placed on
60 the assigned basis. (Tr. 38.) They were placed at the mine 100 per cent when the cars were available. Of course, if they did not have sufficient of their own private cars to equal the division distribution, then unassigned cars were given to equal the average distribution, but not to exceed. This practice which I have described of the L. & N. will be affected by this order, as the cars would have to be distributed on the prorate basis. As to our own home line fuel cars, I suppose the excess over the prevailing percentage would be thrown into the general distribution. If the prevailing percentage would be only 50 per cent, we could only put 50 per cent of that total output fuel cars at the mines (Tr. 39) and we could only get 50 per cent of our contract. As to foreign line fuel cars, we could not place those in excess of the pro rata percentage, and the same is true as to private cars. (Tr. 39.)

(X–ex. Mr. LIVERIGHT.) L. & N. was a respondent in the proceedings before the commission. (Tr. 39.) I do not believe it offered any testimony at the original hearing and I don't think it offered any at the rehearing. (Re–D. ex. Mr. RIVINUS.) When I said that no evidence was offered on behalf of the L. & N., I mean that I did not testify for the L. & N. and, so far as I know, no other L. & N. employee testified. I understand we were represented by counsel in the case and there was testimony offered on behalf of the railroads. It was my understanding that that testimony was intended to be representative of the situation on our railroad. (Tr. 40.) I should think that the L. & N. did, in that representative way, give testimony. (Re–X. ex. Mr. LIVERIGHT.) I did not hear all the testimony and have not read it all and couldn't answer that there was no specific picture given of the conditions on the L. & N. It hasn't come to my knowledge personally. (Tr. 41.)

New York, Chicago & St. Louis Railroad (Nickel Plate). W. A. COLLIA sworn. (D. Ex. Mr. RIVINUS.) Resides at Cleveland. Superintendent of transportation of the Nickel Plate. (Tr. 42.) Our annual consumption is about one and a half million tons of bituminous coal for motive power fuel. We get a very small proportion at a mine on our rails and the balance from seven of our
61 connecting railroads. About 15 per cent comes from one mine on our railroad and constitutes about 20 per cent of the output of that mine. (Tr. 42.) We have a contract with the mine for that particular output, which is 20 per cent of their operation. We furnish at the present time our own cars to take care of that coal. For receiving the coal from foreign railroads originating on other railroads we have contracts with coal companies located on these various railroads for partial outputs of their mines. At the present time they are all partial output contracts. The arrangement we

made for cars to receive that coal is that to some of these mines we send our own cars to the railroads to apply on these orders. With some other mines we have an arrangement with the originating railroad to use their own cars with a per diem arrangement. Some coal comes to us in the originating railroad company cars and some coal comes to us in cars that we send to the originating railroad for the purpose of receiving it. In sending our own cars off our own line to get our own coal at the present time we simply deliver the cars to the connection, permitting it to distribute the cars to the desired mines. (Tr. 43.) We have an understanding, and they put the cars where they are required. Of our own knowledge we don't know what the foreign line does. (Tr. 43.) This coal comes mainly to us from the Bessemer & Lake Erie, B. & O., Wheeling & Lake Erie, C. & O., Illinois Central, Chicago & Eastern Illinois, and the C., M. & St. P. The practice I have described is affected by the order in that prior to the order we took the entire output of several mines and assigned our cars to take care of the entire output of these mines to get our fuel coal. All of these mines were foreign. Before the effective date of this order we had to consign our cars direct to these mines and what I have been describing as our present practice is the result of the order. The order had some effect in the making of our contracts which were made in contemplation of this order. (Tr. 45.) (X-ex. Mr. LIVERIGHT.) I cannot say that the distributing of our contracts for coal supply more widely is the result of the order, but since the order that is true. I can not say offhand among how many we are distributing them. (X–ex. Mr. ESTERLINE.) There is no car shortage now to my knowledge. There is none on our railroad. As I understand it, this order of the commission brings about a change only in the event of a car shortage.

62 We must take car shortage into consideration in making a contract, that there may be a car shortage at some future time. That is all for the future. We have to be all prepared. (X-ex. Mr. LIVERIGHT.) This widespread distribution of fuel orders is in anticipation of a possible car shortage.

Minneapolis & St. Louis Railroad. E. J. STURTEVANT sworn. (D. ex Mr. RIVINUS.) Resides at Minneapolis. Superintendent of transportation, M. & St. L., which annually consumes about 500,000 tons of bituminous coal as fuel for motive power. (Tr. 46.) We get it from controlled mines and partial output of private operations located on our line. The percentage of mines controlled by M. & St. L. is about 33⅓ per cent. One-third of the consumption is obtained from controlled mines and the rest we get from commercial mines. One foreign line railroad, the Atchison, Topeka & Santa Fe, gets fuel on our lines. None of the mine operations on our line have any cars or have any assigned to their specific use. (Tr. 47.) The arrangements we make for the distribution of cars of these two classes, our home line fuel and foreign line

fuel, for the Santa Fe are that prior to the inception of the order the Santa Fe sent cars direct to the mines with which they had a contract. We assigned our own fuel cars to our controlled mines and to the extent of our contracts with the private operations. (Tr. 48.) There has been no car shortage since the inception of this order. Prior to the order of the commission the practice was to deliver the Santa Fe cars to the mine that had their contract, irrespective of the rating of the mine or the supply of cars available. We did that as to our own home line fuel. The practice as to fuel cars, home and foreign, is much the same as described by Mr. Deasy of the P. R. I believe it is about the universal practice generally speaking. In the case of car shortage, the order of the commission would restrict the supply of coal. We would be forbidden to furnish the Santa Fe cars to the mine furnishing coal to them in excess of their percentage. It would be the same with our own cars. (Tr. 49.) The balance of the coal to meet our own fuel requirements would have to go into the general distribution.

Norfolk & Western Railroad. D. E. SPANGLER sworn. (D. ex. Mr. RIVINUS.) Resides at Roanoke, Va. General superintendent of transportation, N. & W. For motive power the N. & W.
63 annually consumes about three and a quarter million tons of bituminous coal, which it gets from mines on the line of its own railroad. (Tr. 49.) It purchases that coal by yearly contracts and from mines which the N. & W. own. Part of the coal is taken from its own mines, part from the entire output mines, and some on a partial output basis. About a third of it comes from our mines and two-thirds from the other mines. In some years the entire output tonnage is a substantial part of the other two-thirds, and other years the partial output percentage exceeds the entire output tonnage. In some instances other railroads purchase and have coal loaded on the lines of the N. & W. In making provision for cars to load their coal, sometimes cars are sent on our road to load coal and those cars are treated as any other commercial car. Private cars are not loaded on the lines of the N. & W. (Tr. 50.) As to railroad fuel, home line and foreign prior to the effective date of this order, to our own mines, and to those mines whose entire output we purchased on contracts, cars were consigned and placed in quantities to receive the coal that was to come from the mine. The cars placed for partial output coal went to the mines from which we purchased the coal, and no distinction was made between those cars and so-called commercial cars that were placed at such mines. As to foreign line railroad fuel cars, we made no distinction as to them. Those were treated just as commercial cars. (Tr. 51.) On the N. & W. this order would interfere with placing cars at our mines and interfere at entire output mines with receiving all the coal due from them, and we would be in default in our fuel. (Tr. 51.) It would not affect

distribution at part output mines, whether home line or foreign railroad fuel. (X-ex. Mr. LIVERIGHT.) As to how long foreign line fuel cars have been considered part of the general distribution some years ago the Seaboard Air Line purchased the entire output of a mine on our road for a term of years, and during that time the Seaboard Air Line furnished its own cars and the N. & W. supplied them to this mine but furnished it no other cars. It was dependent entirely on the cars of the Seaboard Air Line, so that that mine and the cars which it received were in fact taken out of the distribution entirely and the mine rating. That was back in 1907, and that Seaboard contract ran for five years or longer.
64 Since 1907 the practice has been to regard foreign line coal cars as part of the general distribution. I was a witness before the commission in this proceeding and gave substantially the same testimony there as I am giving here so far as the questions compare. (Tr. 52.)

Virginian Railway. W. F. LEE sworn. (D. ex. Mr. RIVINUS.) Resides at Princeton, W. Va. Chairman of car allotment commission, V. R. That company annually consumes about 600,000 tons of bituminous coal for motive power. It comes from mines on our lines. The entire output of two mines was taken. (Tr. 53.) I do not know just what the arrangements are. It has been taken for a number of years with the exception of a short occasion where they had some labor trouble or something and then it was taken from various mines in the field. Those two mines supply the entire railroad fuel necessities. We furnish the mine sufficient cars to fill our requirements without regard to a car shortage that may be prevailing at the time. We take our own fuel necessities from those mines. Other railroads buy coal from mines on the rails of the V. R., but not a great deal. (Tr. 54.) They do not make any provision as to cars to receive their coal. This coal is loaded in V. C. cars. No private coal cars are loaded on the V. R. The order of the commission will affect the practice I have described to the extent that we will not be allowed to furnish the fuel mines more than their pro rata share of the available cars. The excess of cars over and above the existing percentage would have to be thrown in to the general distribution of these two mines.

Akron, Canton & Youngstown Railroad. J. M. HOOD sworn. (D. ex. Mr. RIVINUS.) Resides at Akron, Ohio. General superintendent of the A., C. & Y. Ry. Co. That road uses about 50,000 tons of bituminous coal per year for fuel for its motive power. We get it from mines on connecting lines. We originate no coal on our line. (Tr. 55.) It all comes from foreign lines. To receive that coal, when possible to arrange with the railroad on which the coal is purchased, A., C. & Y. Ry. Co. cars are sent to load the coal into. They are cars of our own railroad and are sent off line to get this coal. Wheeling & Lake Erie, and at times other railroads,

originate the coal. In going out for loading they are billed
65 to the mine with which the order has been placed. This was
the practice prior to the effective date of this order. (Tr.
56.) The cars must be placed for loading because we get them back
loaded with the fuel. (Mr. RIVINUS.) That is the general line of
testimony which will be offered by this group, and perhaps we can
shorten this if the other side will agree to that. (Tr. 57.) (Mr.
ESTERLINE.) (We are willing to admit that the testimony of the
witness for the A., C. & Y. Ry. Co. is typical of the evidence which
Mr. Rivinus has for all of the carriers of that group—that is to
say, the carriers who secure their fuel from off their own lines.)

Atlantic Coast Line Railroad. C. M. BUTLER sworn. (D. ex.
Mr. RIVINUS.) Resides at Wilmington, N. C. (Tr. 57.) Fuel
agent for the A. C. L., which does not originate any of the bitumi-
nous coal which it uses for fuel. Thirty per cent of the A. C. L.
consumption is procured in cars which the A. C. L. consigns to the
foreign line or connecting line which originates the coal and which
sends the cars to the mines from which the A. C. L. has purchased
the coal. The balance of it is gotten from railroads in the cars
owned by the railroads on which the mines are located. (Tr. 58.)

Boston & Maine Railroad. S. J. TRUDEAU sworn. (D. ex. Mr.
RIVINUS.) Resides at Salem, Mass. Assistant to the fuel agent.
B. & M., which originates no bituminous coal which it burns for
fuel. It gets the coal in Pennsylvania, Virginia, and West Virginia.
B. & M. has its own coal cars that it sends to the mines for all rail
movements. It makes no provision for the tidewater coal. As to
cars which we send for the all-rail coal, my testimony in substance
would be about the same as that of Mr. Hood of the Akron Rail-
road. (Tr. 59.) I suppose the cars are placed for loading at the
mines to which we consign them, because we get them back.

Canadian National Railways. GEORGE HENRY JENKINS sworn.
(D. ex. Mr. RIVINUS.) Resides at Montreal. General fuel agent.
C. N. R., which does not originate any bituminous coal on its
American lines. (Tr. 60.) Our coal is covered by four types of
supply—one from our own mines in a long-term contract; some
from other mines on yearly contracts, a portion on other types of
contracts for the lake season, and short-term orders, weekly or
monthly as the case may be. For most all our coal—that is the
66 all-rail coal—we endeavor to furnish our own cars. (Tr.
60.) Our American coal all comes from railroads other than
our own. In sending our cars to the other railroads that originate
the coal we simply turn them over to the connecting line to take
down to the mines with the name of the mine where the coal is to
be loaded. So far as I know the practice follows that described
by Mr. Hood of the Akron Railroad. (Tr. 61.) I suppose those
cars go to the mines because they come back with the load.

New York, New Haven & Hartford Railroad; Central New England Railroad. GUY G. BUTLER sworn. (D. ex. Mr. RIVINUS.) Freight assistant to the superintendent of transportation, N. Y., N. & H. and C. N. E. R. R. I speak for both railroads. Neither originates bituminous coal which they burn in the locomotives. It comes from off-line and such as comes all-rail we arrange for specifically in line with the testimony given by Mr. Hood. The tidewater receipts we do not supply cars for—that is, for the movement from the mines to the point at which the vessels are loaded. Assuming that we got the coal that moves from the mines to the boat, it comes by boat and we receive it and distribute it. But we make no arrangement for that first rail haul. We do not supply that equipment. For the all-rail movement we either supply the cars or make an arrangement equally agreeable between the originating line and ourselves, which amounts to the same thing. Concerning the cars we do supply, by prior arrangement with the originating line, we either haul to some distributing point on the originating line or bill specifically to the individual mine. The return of the load is the test that the cars were placed at the mines where we have made arrangements for fuel. That is the only way we know what is done with those cars. (Tr. 63.)

Central Railroad of New Jersey. J. J. FOLEY sworn. (D. ex. Mr. RIVINUS.) Resides at Westfield, N. J. Superintendent of car service of the C. R. of N. J., which burns bituminous coal for motive power. (Tr. 63.) It originates no bituminous coal on its lines and makes arrangements for receipt of coal that we have bought at mines on the lines of other railroads. As a general proposition, they are billed to a specific point on the road on which the coal originates. I don't know how they would treat it in time of car shortage. (Tr. 64.)

67 Delaware & Hudson Railroad. H. A. EMPIE sworn. (D. ex. Mr. RIVINUS.) Resides at Auburn, N. Y. General fuel agent of the D. & H., which burns bituminous coal for fuel motive power. (Tr. 64.) It originates no bituminous coal. It comes through the lines of other railroads. During periods of car shortage and prior to the commission's order we assigned cars to the mines for loading. We could tell by receipt of shipments if there was a car shortage. In billing these D. & H. cars off line, we carded them direct to the mines for loading. So far as we knew, they got there because we got them back. (Tr. 65.)

Delaware, Lackawanna & Western Railroad. A. L. LEWIS sworn. (D. ex. Mr. RIVINUS.) Resides at Scranton, Pa. Superintendent of car service of the D. L. & W., which does not originate any bituminous coal which it burns in its engines. We make provision for receipt of bituminous coal in cars of the D., L. & W. which we send

for it. (Tr. 66.) We consign them either to the individual mine or to the coal company from whom the coal is obtained. In the case of the coal company, the cars are delivered to the connection, billed to the specific coal company, but no individual mine specified. The railroad on which the mines are located distributes those cars. So far as I know, the cars are placed in accordance with our directions, because we get them back.

(X-ex. Mr. LIVERIGHT.) We buy this coal from the coal companies I refer to. In most cases we do not know what particular mines it comes from. Very little of our coal is bought from coal companies in that manner. I would not be able to say the percentage, but it is not very much. So far as I know that coal company might purchase coal from somebody else, but it has to be the same grade. (Tr. 67.)

Lehigh Valley Railroad. J. N. HANES sworn. (D. ex. Mr. RIVINUS.) Resides at Bethlehem, Pa. Superintendent of transportation of the L. V., which does not originate any bituminous coal which it burns in its engines. The L. V. makes provision for the receipt of that coal in coal cars, in the majority of instances sending their own cars through, billed direct to the mines or to the railroad
on which the mines are located for distribution by that rail-
68 road to the various mines at which their orders are placed.
We believe these cars are placed at the mines by the railroad originating the coal, because they are returned loaded with coal. (Tr. 68.) That is all I know about it.

Missouri, Kansas & Texas Railroad. O. W. CAMPBELL sworn. (D. ex. Mr. RIVINUS.) Resides at Dennis, Tex. Superintendent of car service of the M., K. & T., which originates bituminous coal. It burns bituminous coal in its engines. A portion of the coal is procured on the line of the railroad and a portion of it off-line. For the year 1925 it was about 25 per cent off-line and 75 per cent on-line. (Tr. 69.) By prior contracts we arranged for the purchase of that coal. As to proportions, whether from total-output mines or partial-output, our use of bituminous coal is only for a portion of the line, and the quantity it is necessary to have is not sufficient to justify making contracts for total output of mines, so it is partial-output mines. The fuel on the rest of the line is oil. Some of the small lines purchase a small quantity of coal from mines located on the lines of the M., K. & T., but not in any large quantity. (Tr. 70.) They make no provision for cars for receipt of their coal. It comes to them in M., K. & T. cars or whatever cars may be billed direct to mine. No private cars are loaded on the M., K. & T. As to fuel coal for our home line and foreign line railroads, our practice has been, prior to the effective date of this order, in times of car shortage, to supply these mines with which we had contracts with the full quota of cars for filling those contracts. That was without regard

to the prevailing percentage of distribution. We treated the short-line railroads who do not furnish cars as commercial shippers. If enforced, the effect of the order on the M., K. & T. will mean that instead of our furnishing a full supply to mines with which we have contracts, they will necesarily have to take their distributive share of all cars that are available, regardless of whether for fuel purposes or commercial. Any cars over and above the prevailing percentage which we would apply formerly for fuel receipts will be cut off, and those must be distributed generally.

(X. ex. Mr. ESTERLINE.) We have not made the change already, but there has been an understanding in case of car shortage that the change would be made. There is no car shortage now.

69 Nashville, Chattanooga & St. Louis Railway. E. M. WRENNE sworn. (D. ex. Mr. RIVINUS.) Superintendent of transportation of the N., C. & St. L., which burns bituminous coal for fuel in large quantities per year, which is produced on the line of the railroad except in times of strikes and other emergencies, when it is gotten from other sources. That coal is procured by contract for partial output, which ordinarily means on the line. (Tr. 73.) In distributing the cars for receiving that bituminous coal for our own fuel, we furnish our cars preferentially. In time of car shortage, assuming we have a mine from which we are bringing coal in greater quantity than the prevailing percentage, pro rata of distribution, prior to the effective date of this order we would furnish the mines with the full supply of cars for company fuel. (Tr. 74.) Sometimes other railroads secure fuel coal from mines on the line of our railroad, but there is no such arrangement just at present. In the past when other railroads got coal they made provision as to cars, which were consigned to the particular line when they began loading the coal. We place those cars regardless of pro rata supply in time of car shortage. (Tr. 74.) There are no private cars loaded with coal on our line. The present effect of the order is nil, because there is 100 per cent car supply. The potential effect is that we would have to furnish cars pro rata and not preferentially for company fuel, which perhaps would mean a shortage of fuel to operate the railroad. In cases of home line railroad fuel cars, they would have to go into the pool. The same would be true of the cars that would have to be set aside as the company railroad fuel cars. (Tr. 75.)

Pittsburgh & Lake Erie Railroad. J. L. O'TOOLE sworn. (D. ex. Mr. RIVINUS.) Resides at Pittsburgh, Pa. Superintendent of freight transportation of the P. & L. E., which consumes approximately 650,000 tons annually of bituminous coal for motive power, which is procured from mines on its line. For the purchase of this railroad fuel, in 1920 and 1921, if my recollection is correct, we

procured our fuel coal on the assigned-car basis. We do not own those mines. (Tr. 76.) We purchase in some instances total output and the balance partial output. In times of car short-
70 age we assign cars to the total-output mines. By that I mean we place enough on our own P. & L. E. cars at the mine to receive the railroad fuel necessities from that mine, but not necessarily P. & L. E. cars at the partial-output mines. The cars that are available we place in sufficient quantities to receive our necessities. In times of car shortage under the rules that were in effect prior to this order the assigned cars were handled strictly in accordance with the governing rules. Those rules did not regard the percentage when it came to our railroad fuel coal. Other railroads procure their fuel coal from mines on the line of our railroad. They make provision for cars as to receipt of them; in times of car shortage they send their own cars for their fuel coal. In some instances those cars come carded to specific mines, and in other instances, notably the New York Central Railroad fuel coal, will normally have a sufficient number of that ownership equipment on that line to take care of their contract requirements at mines located on the P. & L. E. R. R. If they do not, we call upon them for additional empties and they supply them. As to placement of the cars at a mine for the New York Central, in time of car shortage, if they have the total output, we do not restrict to the prevailing percentage. We supply the mine until it is ready to deliver whatever the contract calls for. Private coal cars are loaded on the line of our railroad. Our practice as to them with regard to placement in times of car shortage is that they were handled identically the same as the assigned cars for railroad fuel. They were placed on the orders of their owners without restriction to the prevailing percentage. (Tr. 78.) With regard to our own home-line fuel cars and foreign-line fuel cars, in times of car shortage the order of the commission would act to restrict the placement of those cars to the prevailing pro rata distribution. As to our own home-line fuel cars, the excess, if any, would have to go into the general distribution. As to foreign fuel cars, in the instance of the New York Central, the excess would go into general distribution, but with foreign-line ownerships, it would depend upon the wishes of the owner. If he released the cars, we would put them in the general distribution. Private cars would be held until or subject to the wishes of the owners of the private car. (Tr. 79.)

71 Reading Company. A. T. OWEN sworn. (D. ex. Mr. RIVINUS.) Resides in Philadelphia. Superintendent of transportation, Reading Co. For fuel motive power the Reading burns about 1,300,000 tons of bituminous coal and about 1,000,000 tons of anthracite. About 85 per cent of the bituminous is procured from mines on the B. & O., and the balance is scattered over the Pennsyl-

ania, Western Maryland, and B. R. P. (Tr. 80.) No bituminous oal is mined on the lines of the Reading. In purchasing that coal rior to 1924 we made contracts for the entire output of mines, or bout 95 per cent. In making provision for coal cars to receive hat coal we would turn over to the B. & O. a sufficient number of ars to take care of our requirements from those mines, and on the ther railroads we would ticket the cars directly to the mines. We ave instructions to the B. & O. operating official where to have the ars placed, so that in one way or other the cars were directed to articular mines. We know that the B. & O. and Pennsylvania laced the cars at the mine where they were supposed to go as they ame back with the coal. The effect of the order of the commission on a railroad in the situation of our railroad is that we won't be able to get our supply in times of car shortage, because the originating lines won't be able to place the cars in accordance with our directions in times of car shortage. (Tr. 81.)

(Statement by Mr. RIVINUS: My oral testimony is closed. I have, as your honors remember, handed up certified proofs of the main facts that we shall rely on in this case in the form of the reports of the Interstate Commerce Commission. You will recall the narrow purpose of this oral testimony. The railroads close their case at this point. (Tr. 82.))

72 *Stipulation re narrative testimony*

JULY 1, 1926.

The parties, by their respective counsel, stipulate that the foregoing twenty-five pages constitute a true and correct transcript in narrative form of all of the testimony introduced at the hearing before the court. In certifying the transcript on the appeal the clerk shall include the foregoing narrative and attached copy of exhibit in lieu of the original testimony and exhibit or a copy thereof.

F. M. RIVINUS,
(July 16, 1926)
HENRY WOLF BIKLÉ
(16 July, 1926)
Solicitors for Plaintiffs.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
R. GRANVILLE CURRY,
Solicitor for Interstate Commerce Commission.

Approved:
J. WHITAKER THOMPSON,
District Judge.

73 *Plaintiffs' Exhibit 4*

PENNSYLVANIA RAILROAD SYSTEM. RULES GOVERNING THE DISTRIBUTION OF CARS FOR COAL AND COKE. ISSUED BY R. P. RUSSELL, SUPERINTENDENT FREIGHT TRANSPORTATION, EASTERN REGION; A. J. DAWSON, SUPERINTENDENT FREIGHT TRANSPORTATION, CENTRAL REGION; F. J. KRON, GENERAL SUPERINTENDENT TRANSPORTATION, SOUTHWESTERN REGION. APPROVED BY J. C. JOHNSON, GENERAL SUPERINTENDENT TRANSPORTATION, EASTERN REGION; J. B. FISHER, GENERAL SUPERINTENDENT TRANSPORTATION, CENTRAL REGION. ISSUED APRIL 2, 1923. EFFECTIVE MAY 10, 1923.

BASIS FOR DISTRIBUTION OF CARS FOR LOADING COAL AT BITUMINOUS COAL TIPPLE MINES

The following rules shall govern the methods for rating bituminous coal tipple mines, and shall be used as the basis for the distribution of empty cars:

1. The daily rating of a mine shall be determined by the application of the following principles:
   (A) Physical conditions.
   (B) Past performance.
   (C) Labor supply.
   (D) Ability to currently produce and load coal in railroad cars.
   (E) Other factors that may affect the production and shipment of coal.
   (F) The recognized work day shall be used (not to exceed 10 hours).

2. The most restrictive factor shall control the rating of a mine. Daily ratings shall be expressed in fifty (50) net ton cars; fractional parts of cars shall be shown as tenths.

3. The gross daily rating of a mine served jointly by or for two or more carriers, steam or electric, shall be determined by the application of the principles contained in rule 1.

4. The daily capacity of a mine which delivers part of its output to a coking plant, or to locomotives at the tipple, shall be determined by the application of the principles contained in rule 1. Deduct from the capacity so determined the daily average number of net tons of coal diverted to a coking plant or to locomotives at the tipple during the preceding calendar month. This computation shall be based on the number of calendar days the mine worked. The result shall be termed the daily rating.

5. When a mine the daily rating of which has been determined under the provisions of rule 4 ceases to deliver all or part of its output to a coking plant or to locomotives at the tipple, and offers additional coal for shipment by rail, its daily rating shall be increased

by an average tonnage per day corresponding to that part of the tonnage previously diverted during the preceding calendar month and which it now desires to ship. This computation shall be based on the number of calendar days the mine worked.

6. When a mine the daily rating of which has been determined under the provisions of the foregoing rules desires to deliver all or part of its output to a coking plant or to locomotives at the tipple, its daily rating shall be decreased by deducting the average daily number of net tons of coal that will be diverted to a coking plant or to locomotives at the tipple. The result shall be termed the daily rating.

7. If a mine be idle for a period of 60 consecutive days or more, fifty (50) per cent of the last rating determined shall be the rating when work is resumed and until a revised rating is established.

8. After a rating shall have been determined in accordance with the foregoing rules, it shall continue in effect so long as the principles affecting the mine enumerated in rule 1 remain materially unchanged.

74 9. The mine manager or superintendent in charge of actual operation shall furnish the general superintendent of transportation having jurisdiction over the territory in which the mine is located, on Form No. C. T. 862, the following information separately for each mine for each month as follows:

(A) Name of mine.
(B) Division.
(C) Number of net tons of coal produced.
(D) Total number of net tons of coal shipped via Pennsylvania Railroad system.
(E) Total number of net tons of coal disposed of via each other outlet.

Specify outlet. {———. ———. ———.

(F) Total number of net tons of coal dumped for storage in stock piles or bins.
(G) Number of calendar days the mine worked (the number of days on which the mine started to work shall be used).
(H) Siding number.
(I) Location of mine.
(J) Character of mine (drift, shaft, slope, or stripping).
(K) Seam or seams operated.
(L) Thickness of seam or seams operated.
(M) Number of working places available.
(N) Machine or pick mining.
(O) Number and type of mining machines.
(P) Number of openings tributary to one tipple.
(Q) System of haulage.

(R) Capacity of haulage per day (net tons).
(S) Number of loaders working as of date of this report ———(see note).
1. Pick———.
2. Machines———.
(T) Number of mine wagons.
(U) Average capacity of all serviceable mine wagons (net tons).
(V) Capacity of tipple per day (net tons).
(W) Capacity of tipple siding in cars (above tipple)——. (below tipple)——.
(X) Number of ovens owned.
(Y) Number of ovens in blast.
(Z) Average daily tonnage (net) of coal coked.

NOTE.—In reporting number of coal loaders working, total number of coal loaders having coal dumped as shown by the tipple sheet shall be used, the check number of every coal loader or loading machine actually engaged in loading coal to appear on the tipple sheet.

The report must be forwarded not later than the tenth of the succeeding month.

10. When a mine manager or superintendent fails or declines to furnish reports or to make accurate reports as required by these rules, the mine shall be penalized by a reduction of 50% of its rating for a period of 30 days.

RULES GOVERNING THE DISTRIBUTION OF CARS FOR LOADING BITUMINOUS COAL AT TIPPLE MINES

11. Whenever the available car supply in any region or district is such that all orders for cars can be filled, cars shall be placed at each mine in accordance with its daily order, and a mine may hold such cars under load and unbilled on the mine tracks and up to the capacity of such tracks below the tipple. Whenever the available car supply in any region or district becomes such that all orders for cars can not be filled, each mine shall be given its pro rata share of cars in accordance with the following rules, and all unbilled loads then held on the mine tracks must be promptly billed, and pending such disposition will be accounted for according to the provisions of rule 19 hereof:

12. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

13. Grouping of mines, or pooling of cars as between mines, will not be permitted.

14. On application of mine operators, and in the discretion of the railroads, cars may be placed on such days only and at such mines only as may elect to work, and overages and shortages in car supply resulting from this distribution shall be adjusted on succeeding days

15. A mine with a daily rating of less than one (1) cars shall not be furnished with a car until sufficient coal shall have been produced and accumulated to permit the loading of the car on the day placed. In event the car so furnished is not loaded on the day placed the entire car shall be charged against it each service day thereafter while it is detained.

16. Each mine operator shall furnish the car distributor by 4.00 p. m. each day a report on Form No. C. T. 694 as follows:

(A) Number of unconsigned loads on hand at 7 a. m.

(B) Number of empty and partly loaded cars on hand at 7 a. m.

(C) Additional number of empty cars received during the day.

(D) Aggregate number of empty cars received during the day.

(E) Number of cars loaded during the day:

Pennsylvania Railroad fuel———cars.
Foreign railroad fuel———cars.
Commercial———cars.
Total———cars.

(F) Number of empty cars standing over at close of day.

(G) Number of empty cars standing over at close of day which were received prior to 7 a. m.———cars, and prior to 9 a. m.———cars.

(H) Number of partly loaded cars on siding at close of day.

(I) Number of unconsigned loads on hand at close of day.

(J) Total number of empty cars required for loading following day.

(K) Number of consigned cars on hand ready for movement.

(L) Number of net tons of coal produced.

(M) Number of net tons of coal shipped via Pennsylvania Railroad system.

(N) Number of net tons of coal disposed of via each other outlet: outlet specified.

(O) Remarks.

Copies of orders for cars for a mine that is joint with any other carrier, steam or electric, shall be filed with a designated representative of each such carrier. Such combined requisitions must not exceed the gross daily rating of the mine.

Telephone orders may be accepted when it is impracticable to file the report with the car distributor by the time specified. The telephone order must be confirmed in writing on Form No. C. T. 694 each day.

75 17. The recognized standard car for coal-car distribution is 50 tons. Others are compared thereto by tenths of a car, i. e., 80,000 pounds capacity equals eight-tenths (.8) of a car; 140,000 pounds capacity, one and four-tenths (1.4) cars, etc., and cars must

be charged and car distribution records maintained accordingly. Closed cars shall be counted against the mine as six-tenths (.6) of a car, but closed cars furnished without being ordered shall not be counted unless loaded. Flat-bottom gondola cars marked in excess of 100,000 pounds capacity shall be charged as one (1) car.

18. (A) When the cars available at 7 o'clock a. m., not including partly loaded cars, do not equal or exceed in number 25 per cent of the raily rating, or order if less than the rating, no cars will be charged against the mine that day except such as are loaded on that day.

(B) When the cars available at 7 o'clock a. m., not including partly loaded cars, equal or exceed in number 25 per cent of the daily rating, or order if less than the rating, all additional empty cars placed by 9 o'clock a. m. will be charged against the mine that day.

(C) Cars placed between 9 o'clock a. m. and the time the mine ceases work for the day, if loaded or partly loaded on the day placed, will be charged against the mine on that day.

(D) All private cars placed for owners, liading will be considered as ordered.

19. The pro rata share of cars to which each mine is entitled, except as provided in rule 21, shall be based on its rating, or order when less than its rating. When a mine has empty or partly loaded cars which were available prior to 7 a. m. or unconsigned loads standing over at the close of the day's business, such cars shall be charged against it each service day thereafter while they are detained, except as provided in section A, rule 18.

If on any day a mine be furnished with cars totaling less than 100 per cent of its rating, or order if less than its rating, and for any cause whatever other than railroad responsibility fails to load the entire number, the mine shall be considered as having been furnished 100 per cent of its requirements, and its order shall be arbitrarily reduced to the number of cars furnished, except as provided in section A, rule 18.

20. Private cars, such cars as are assigned to mines for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in R. R. Commission of Ohio et al v. H. V. Ry. Co., 12 I. C. C. 398, and Traer v. Chicago & Alton Railroad Co. et al, 13 I. C. C. 451, and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

21. If the number of assigned cars placed at a mine during any period, as provided in rule 20, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

22. If the number of assigned cars placed at a mine during any period, as provided in rule 20, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

23. If a mine receives more or less cars than it is entitled to during any period, as provided in rule 18, and after eliminating assigned cars as provided in rule 21, it will be charged with a surplus or credited with a shortage accordingly, and the discrepancy adjusted as promptly as practicable.

24. (A) A statement showing the car distribution for the preceding month for the division on which the mine is located will be furnished by the superintendent of the division as soon as such distribution is ascertained to such operators or accredited representatives thereof as make application for the same.

(B) A statement showing the total car distribution for the preceding month by divisions will be furnished by the general superintendent of transportation as soon as such distribution is ascertained to such operators or accredited representatives thereof as make application for the same.

BASIS FOR DISTRIBUTION OF CARS FOR ANTHRACITE COS.—EIGHT-HOUR DAY

25. Daily order of shipper. Available cars pro rated in accordance with the daily order of each mine.

RULES FOR RATING OF AND CAR DISTRIBUTION TO OTHER THAN TIPPLE MINES LOADING BITUMINOUS COAL

26. The daily rating shall be based on the time consumed in loading the last car previously furnished.

27. Upon any day when the railroad is unable to furnish the full quota of open-top cars required by tipple mines, closed cars only shall be furnished for loading at other than tipple mines.

28. Distribution of closed cars for loading at other than tipple mines shall be on the same percentage basis as currently governs car supply for commodities other than coal and coke.

76 RULES GOVERNING THE DISTRIBUTION OF CARS TO COKING PLANTS IN THE COKE REGIONS

29. Basis of distribution—number of ovens in blast. Daily car capacity of each plant determined by dividing the number of ovens in blast by fifteen for beehive ovens, by eighteen for small beehive ovens, and by twelve for rectangular ovens.

30. Ratings for coking plants are based on the number of ovens actually in blast, and as they go out of blast or in blast ratings are revised.

31. The established rating, or the daily order for cars if less than the rating, of a coking plant is the basis for car distribution.

32. Whenever the available car supply is such that all orders fo cars can be filled, cars will be placed at each coking plant in accord ance with its daily order.

33. Whenever the available car supply is such that all orders fo cars cannot be filled, each coking plant will be given its pro rata share of cars in accordance with the following rules:

34. A steel car type H–21 and H–22 will be charged as one (1) car, and a steel car of the GL type will be charged as six-tenths (0.6) of a car. Box, stock, and wooden open-top cars will be charged as six-tenths (0.6) of a car.

35. Private cars, and such cars as are assigned by the Interstate Commerce Commission, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

36. If the number of assigned cars placed at any coking plant exceeds the plant's pro rata share of the available car supply, it is not entitled to receive any unassigned cars. The assigned cars, together with the coking plant's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other coking plants, based on a revised percentage by reason of such elimination.

37. If the number of assigned cars placed at a coking plant during any period is less than its pro rata share, based on a revised percentage, it is entitled to receive unassigned cars in addition thereto to make up its pro rata share.

38. If a coking plant receives more or less cars than it is entitled to during any period, it shall be charged with a surplus or credited with a shortage and the discrepancy adjusted as promptly as practicable.

39. When two or more coking plants in a given district are controlled by one interest, the cars to which all such plants are entitled will, during a restricted period, be distributed to such plants in accordance with instructions received from the shipper.

40. Cars placed at a coking plant during each period of twenty-four (24) hours ending at 6 or 8 a. m., or when Sundays or holidays intervene the longer period ending at 6 or 8 a. m. of the day immediately succeeding the Sunday or holiday, shall be charged against the coking plant on the day when such period ends.

If for any reason cars are placed after the hour named, and if they are loaded on the day they are placed, they shall be charged against the coking plant for that day.

41. Empty cars placed in time to load during a period of twenty-four (24) hours ending at 6 or 8 a. m., cars partly loaded, and loaded cars unconsigned standing at the coking plant at the close of the previous day's business will be charged against it each service day thereafter while they are detained.

All individual cars placed at coking plants will be considered as ordered.

42. Shippers will report to the car distributor each day the number of cars loaded during that day, the number of empty cars on

partly loaded cars on hand, the numbers and the initials of loaded cars unconsigned, and the additional cars required for the following day's loading, and such additional information as may be required.

43. The distribution records will be on file in the office of the car distributor, subject to inspection by any operator or accredited representative thereof.

77-78 In United States District Court

[Title omitted.]

Before Woolley, circuit judge, Thompson and Thomson, district judges. On final hearing.

Opinion

Filed Nov. 25, 1925

THOMSON, D. J.

These suits were brought for the purpose of enjoining, setting aside, and annulling an order of the Interstate Commerce Commission relating to the distribution of coal cars among bituminous coal mines in times of car shortage. On March 22, 1921, the commission instituted an investigation, upon its own motion, into and concerning the reasonableness and propriety of the then existing car-distribution rules in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to
79 prescribing such just and reasonable rule or regulation as might appear to be necessary. All of the railroads subject to the jurisdiction of the commission were made parties respondent to the proceeding. The car-distribution rule under investigation is what has been known as the "Assigned car rule."

The cars for loading with bituminous coal involved in the investigation and in the order of controversy are "system cars," or cars of railroad ownership set for loading at mines upon the line of the owning carrier or such as may be on its line of railroad and not owned by some specific shipper or restricted as to use, and "assigned cars." The latter are classified as described in the "Assigned car rule," which has been practiced generally by the railroads during periods of coal car shortage since 1907, as follows:

(A) Assigned cars are of three classes—

(1) System fuel cars—that is, cars assigned to mines on a coal loading railroad for the fuel coal of that railroad;

(2) Foreign fuel cars—that is, cars of another railroad assigned to mines on a coal-loading railroad for the fuel of the former; and

(3) Private cars—i. e., cars not railroad owned assigned for the coal of the owner of the cars to its own or other mines.

(B) All assigned cars must be placed at the mines to which they are assigned.

(C) If the number of cars equals or exceeds the number of cars to which the mine is that day entitled under the prevailing rate of system car distribution, the mine is not entitled to any system cars for loading that day.

(D) If the number of assigned cars does not equal the number of cars to which the mine is that day entitled under the prevailing rate of system car distribution, the mine is allowed sufficient system cars in addition to bring its total placement that day up to the distributive share to which it is entitled.

On June 13, 1923, the commission, after conducting hearings and taking testimony, issued its report and entered the following order:

"It is ordered that each of the respondents be, and each is hereby, notified and required to cease and desist, on or before September 1, 1923, and thereafter to abstain, from maintaining and enforcing, in so far as such respondent maintains and enforces, a regulation or practice whereby in the distribution of cars for the transportation of coal among the bituminous coal mines served by such respondent, whether located upon its line or customarily dependent upon it for car supply, private cars or cars for the loading of bituminous coal for railway fuel are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars.

"It is further ordered that each of the respondents which distributes cars to bituminous coal mines located upon its line or customarily dependent upon it for car supply be, and each is hereby, notified and required to establish on or before September 1, 1923, and thereafter to maintain and enforce a regulation and practice whereby all cars distributed by such respondent to such mines must be distributed on a pro rata basis, and if cars are assigned or consigned to any of such mines and if such cars are placed at the mines to which assigned or consigned, they must be so placed that every mine on the same division or district established by respondent for the distribution of cars shall receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars must be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged."

(For Report, see 80 I. C. C. 520.)

Thereafter, upon petition of railroads and owners of private coal cars, the commission on October 5, 1923, reopened the proceeding and held further hearings, and on September 23, 1924, issued its further report and order affirming the order previously made (93

I. C. C. 701), the effective date of the order meanwhile having been extended from time to time to March 1, 1925.

Prior to 1907 the practice in the distribution of coal cars among the mines upon the lines of the railroads in times of car shortage was to establish a pro rata distribution of the available system coal cars among the mines in proportion to the rated daily output capacity of the mines. Thus, if the available supply of system cars for delivery to the mines was 1,000 and the total daily output capacity of the mines in the district affected by car shortage was 2,000 carloads, each mine would receive 50 per cent of the system cars available, so that, if the daily rating of a mine was 100 carloads, it would receive but 50 system cars. The practice, with some exceptions, however, was not to count against the mine's share railroad fuel cars or private cars assigned to that mine, but they were placed at the mines to which assigned in as great numbers as the facilities of the railroad would permit, and mines loading railroad fuel coal or coal for private car owners received an equal pro rata share of system cars with all other mines.

That practice resulted in complaints before the commission in the cases of Railroad Commission of Ohio et al. v. Hocking Valley Railroad Company; Id. v. Wheeling and Lake Erie Railroad Company, 12 I. C. C. 398. Those cases involved the practice of the carriers in not counting foreign railroad fuel cars and private cars against the mines to which assigned. The commission held the practice discriminatory and ordered its discontinuance. In the case of Traer v. Chicago and Alton Railroad Company, 13 I. C. C. 451, the commission following the Hocking Valley decision, held that cars used by railroads upon their own lines for their own necessary fuel supply may be given in any numbers to the mine or mines from which such fuel supply is received, but that the failure to count such fuel cars against the mine or mines was discriminatory and that practice was ordered abolished. The orders upon appeal were held by the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U. S. 452, to be within the power conferred upon the commission to control the use of the equipment of the railroads in order to prevent discrimination against or undue preference of miners and shippers of coal in the distribution of coal cars in time of car shortage. The rule laid down by the commission in those cases has come to be known as the Hocking Valley-Traer rule and was adhered to by the commission and practiced by the railroads until the time of Federal control, when a rule substantially similar in effect was adopted with the power of assignment in the car service section of the Railroad
81 Administration, and, after the termination of Federal control, the commission continued in effect the Hocking Valley-Traer rule.

Suit No. 3285 is brought by thirty-five railroad companies, common carriers by railroad, engaged in interstate commerce and sub-

ject, under the act to regulate commerce, to the orders of the com mission. They are dependent upon steady continuous supply o bituminous coal of suitable quality and in sufficient quantity for th operation of their locomotives and conducting their business as com mon carriers. About 28 per cent of the total annual production o bituminous coal is required for the operating necessities of the rail roads of the United States, and that coal is obtained by the variou railroads through various methods. The lines of some of the rail roads are operated through coal-producing regions, and they obtai all or part of their fuel coal from mines on their own lines; others on whose lines no bituminous coal is produced, from mines located upon other railroads. The mines from which the fuel is supplied are either (1) owned outright and operated by the railroads for their fuel supply, or (2) they are owned and operated by subsidiary mining corporations controlled by the railroads through ownership of stock, or (3) they are leased and operated by the railroads for fuel supply, or (4) are privately owned and the railroads purchase either the entire output or part thereof.

These mine sources are selected with reference to convenience of location for distribution of coal to the places of use and with reference to dependability of quantity and quality of output for the particular requirements of use. The extent of the capacity of the railroads to conduct their business as common carriers depends, therefore, upon the quantity of their proper fuel supply. Many of the plaintiffs have equipped themselves with coal cars of special design not available for commercial use. These cars and coal cars designated for railroad fuel loading, whether system fuel cars or foreign railroad fuel cars, are assigned to the several mines furnishing fuel supply to the extent necessary for the operations of the railroads, but are counted against the share of the mine in times of car shortage.

In all the four other suits the petitioners are owners of private cars which are used for the loading and transportation of bituminous coal. In the case of Bethlehem Steel Company et al., No. 3273, the plaintiff, Bethlehem Steel Company, is engaged in the manufacture, sale, and shipment of iron and steel products at plants operated by it at Bethlehem, Reading, Lebanon, Coatesville, Steelton, and Johnstown, Pennsylvania, Sparrow's Point, Maryland, and Lackawanna, New York. The Bethlehem Mines Corporation produces bituminous coal at mines owned by it in Pennsylvania and West Virginia for consumption by the Bethlehem Steel Company. The Bethlehem Steel Corporation, by stock ownership, controls the Bethlehem Steel Company and the Bethlehem Mines Corporation. These plaintiffs own 3,975 coal cars, representing an investment of more than $8,000,000, which are used in the transportation of bituminous coal from the mines of the Mines Corporation to the plants of the Steel Company. The steel plants represent an investment of more than $408,000,000 and employ approximately 45,000 men, and the coal mines represent an investment of more than $68,000,000 and employ approximately 7,800 men.

Bethlehem's mines are located on and served by the lines of the Pennsylvania, Baltimore and Ohio, the Buffalo, Rochester and Pittsburgh, and the Cambria and Indiana Railroads. Coal mines operated by Bethlehem were acquired and are operated to pro-
82 duce coal of specific and unvarying metallurgical quality and in constant and adequate quantities necessary for production of the grades of the steel made at its plants. The productive capacity of these mines is approximately 9,500,000 tons annually, all of which is necessary for the requirements of the steel plants and is, with unimportant exceptions, not sold commercially. These mines were selected and the 3,975 private cars were acquired by Bethlehem to meet its necessities in producing special grades of steel for such products as steel rails, bridge steel, car wheels and axles, automobile steel, and ordinance steel, of which latter product Bethlehem has produced more than half of all ever used by the United States Government.

It was found that Bethlehem could not rely upon bituminous coal purchased indiscriminately from available mines, because it is necessary to have definite knowledge of the properties of the coal used in its coke ovens in order to produce the special grade of steel necessary in each steel product manufactured in its plants. Chemical impurities, such as phosphorus and sulphur, when present in improper or unknown quantities in coking coal, produce impure coke, which, in turn, results in impure and defective steel. Its coke is produced in by-product ovens at its various plants. The quality of the coke produced, dependent upon the quality and known contents of the coal used, is essential to the carrying on of this industry.

In addition to the necessity of having coal of proper and known physical properties in order to produce the proper quality of steel, coking coal of improper kind and quality results in the crumbling of the coke produced by reason of its being of insufficient physical strength to bear the burden placed upon it in the blast furnaces, and is also destructive of the coke ovens through swelling within them, resulting, when a coke oven is thus destroyed, in the expense and delay of rebuilding the oven and the interruption of the operation and production of the plaintiff's plants. As bearing upon the necessity of a continuous uniterrupted supply from the mines, it is an established fact that metallurgical coking coal not only can not be successfully stored in substantial quantities for extended periods because of the risk of spontaneous combustion, but that such storage causes the coal to lose its properties essential to coking and renders it useless for metallurgical processes.

In the Bethlehem Steel Company suit the United States Steel Corporation and its subsidiaries, the Illinois Steel Company, the Carnegie Steel Company, the American Steel and Wire Company, the National Tube Company, the American Sheet and Tin Plate Company, the United States Coal and Coke Company, the United States Fuel Company, H. C. Frick Coke Company, are intervening plain-

tiffs. The United States Steel Corporation owns 6,029 private cars in which the products of the mines of the United States Coal and Coke Company, the United States Fuel Company, and H. C. Frick Coke Company are shipped to the respective plants of the steel manufacturing subsidiaries of the United States Steel Corporation. The Illinois Steel Company at its plants at Gary and Joliet, Illinois, operates by-product coke ovens where coke is manufactured from certain grades of bituminous coal for use in making steel. The gas secured from the by-product coke in Gary is furnished to the Gary Heat and Light Company, which supplies the city of Gary with heat, light, and power, and the remainder of the gas is used in the process of the manufacture of steel by the Steel Company. The bituminous coal thus used is shipped from the Kentucky and West Virginia mines of the United States Coal and Coke Company
83 and from the Bent- n, Illinois, mines of the United States Fuel Company.

The Illinois Steel Company manufactures steel products at Gary, Indiana, South Chicago and Joliet, Illinois, and Milwaukee, Wisconsin. The Carnegie Steel Company is engaged in the manufacture of steel products at various mills and furnaces located in the western part of Pennsylvania and eastern part of Ohio. The American Steel and Wire Company manufactures steel and wire products at its various mills in Massachusetts, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, and Alabama. The National Tube Company manufactures wrought pipe and tubular goods and steel rails at its plants in the western part of Pennsylvania and in Ohio and West Virginia. The American Sheet and Tin Plate Company is engaged in the manufacture of sheet steel and tin plates at its various mills located in the western part of Pennsylvania and Ohio, West Virginia, and Indiana. The United States Coal and Coke Company is engaged in the mining and shipping of coal at its mines located at Lynch, Kentucky, at Gary, West Virginia, and at Phillipi, West Virginia. The United States Fuel Company is engaged in mining and shipping coal at Benton, Illinois. The H. C. Frick Coke Company is engaged in mining and shipping coal at its various mines in Pennsylvania.

Some of the subsidiary steel companies in their manufacture of steel operate by-product coke ovens where coke is manufactured from certain grades of bituminous coal for use in making steel. This is the case with the Illinois Steel Company, the American Steel and Wire Company, and the National Tube Company. The Carnegie Steel Company uses large quantities of gas and steam coal in its production of steel, as does also the American Sheet and Tin Plate Company. The coal thus used is transported from the mines of the affiliated coal and coke companies partly in privately owned cars. This group of companies has invested over $16,000,000 in their privately owned cars, and unless such cars are available in times of car shortage the result will follow of curtailing the manufacture of

coke and closing down the mills and throwing out of employment many thousands of men.

The intervening plaintiffs, the Steel Company of Canada, Ltd., the Cleveland Cliffs Iron Company, and Perry Iron Company, are owners in undivided one-third interests of 400 private coal cars and undivided one-third interest in the Mather Collieries at Mather, Pennsylvania. The Steel Company of Canada manufactures iron and steel products at Hamilton, Ontario. The Cleveland Cliffs Iron Company operates blast furnaces and supplies raw material to the blast furnaces at Cleveland Ohio, and Warren, Ohio. The Perry Iron Company manufactures pig iron at Erie, Pennsylvania, and has a stock ownership interest in blast furnaces at Toledo and Canton, Ohio. The manufacturing conditions and necessities of these intervenors is substantially similar to those of the Bethlehem Steel Company. The Youngstown Sheet and Tube Company, intervening plaintiff, is engaged in the manufacture of iron and steel at plants at East Youngstown, Brier Hill, Hubbard, Warren, Girard, and Zanesville, Ohio; at Indian Harbor, Indiana; at South Chicago and Evanstown, Illinois; and at Mayville, Wisconsin. It either directly or through ownership of stock in coal companies owns five bituminous coal mines located in Pennsylvania, Ohio, and West Virginia. It owns 1,334 private coal cars, which are used in transportation of coal from its mines to its steel plants. Its manufacturing conditions and necessities for a constant, uniform, and
84 fresh supply of selected metallurgical coal of known and unvarying chemical and physical properties are substantially similar to those in the case of Bethlehem Steel Company.

In No. 3275, the Rainey-Wood Coke Company, the Seaboard By-Product Company, the Chicago By-Product Company, the Donner-Hanna Coke Corporation are corporations engaged in operating by-product coke ovens at, respectively, Swedeland, Pennsylvania, where 110 ovens and by-product recovery apparatus are operated; at Kearney, New Jersey, where 165 ovens and by-product recovery apparatus and water-gas-making apparatus are operated; at Chicago, Illinois, where 105 ovens and by-product recovery apparatus in connection therewith and water-gas-making apparatus are operated; and at Buffalo, New York, where 150 ovens and by-product recovery apparatus are operated. These corporations require a constant supply of bituminous coal of uniform quality and character for the operations of their by-product coke-ovens. Rainey-Wood Company owns 400 private cars; the Seaboard By-Product Company, 1,000 cars, of which 650 are leased and operated by the Chicago By-Product Coke Company; and the Donner-Hanna Coke Corporation owns 500 such cars. There is invested in these cars the sum of $6,300,000, and they are used in the transportation of coal from bituminous mines to their plants.

These companies by modern processes save and preserve the by-products of coal, invaluable in industries, in public and domestic

use, and in the sciences of chemistry and medicine, by carbonizing bituminous coal, directly producing thereby coke, gas, tar, and sulphate of ammonia. Their coke is sold for metallurgical use in blast furnaces in competition with coke made in the beehive ovens in which the by-products are wasted, for making water-gas by public service corporations, which distribute it to the public. The coke so used must be of quality and structure to produce gas of standard quality and heat value contents. It is sold for industrial purposes in making steam, for domestic purposes, in the heating of houses, apartments, and other buildings.

The coke supplied for making water gas is furnished to public service companies supplying the cities of Philadelphia, New York, Brooklyn, and Chicago, and to many other cities and towns and near-by territory.

The gas produced as a by-product is used for the operation of the plaintiffs' plants, and the balance is sold to companies serving municipalities and suburban sections near Philadelphia, Chicago, and Buffalo and their adjacent districts and in northern and central New Jersey. The public gas companies manufacturing their own gas and those supplied with gas are dependent at all times upon the supply of coke and gas received to enable them to perform their public obligations and to maintain adequate and efficient public service. The tar produced in the plaintiff's plants is sold for use in the chemical, drug, dye, photographic, building and road material, and other industries. Sulphate of ammonia is used in the manufacture of commercial fertilizers. The light oils produced are refined to produce benzol for motor fuel and, in times of war, toluol and other materials of which essential high explosives are made. It will be seen that, as a fundamental and essential requirement for the conduct of the operations of these companies, it is essential that they have, as in the Bethlehem case, an even and continuous supply of bituminous coal of selected and known quality. Their private coal cars are, therefore, used for transportation of coal from mines selected with reference to convenience of delivery and quality of coal produced to their respective plants.

85 The Public Service Gas and Electric Company, the plaintiff in No. 3317, is engaged in the business of generating, manufacturing, and distributing electricity and gas for light, heat and power for public use. It has distributing systems in 231 municipalities in the State of New Jersey, with a population of approximately 2,600,000. It supplies electric current for lighting dwellings and other private buildings, public buildings and public highways and heat and power for manufacturing purposes. Its customers using electricity number 525,000. It manufactures and distributes gas for light, heat, and power for domestic, commercial, and manufacturing uses. Its gas customers number 643,000, and its business is rapidly increasing. It uses daily 2,800 tons of bituminous coal for generating electricity and 890 tons for the manufacture of gas.

Its generating stations are located in New Jersey, where there are no coal mines. It obtains its coal supply from mines in Pennsylvania, taking the entire output of two mines. In September, 1920, it purchased 600 coal cars at a cost of $1,750,000 to carry its coal from the mines to its generating and manufacturing station, being impelled to do so by reason of its inability to obtain a regular and constant fuel supply of the proper quality and grade during coal-car shortages, except through priority orders induced by reason of the necessities of its business in serving the public. Prior to purchasing the cars, Mr. Farrand, assistant to the president, laid the situation before Commissioner Aitchison of the Interstate Commerce Commission, and was referred by him to the ruling in the Hillsdale Coal case, 19 I. C. C. 356, as ground for assurance that owners of private cars are entitled to their exclusive use so long as such cars are counted against the distributive share of the mines to which assigned. The mines from which the plaintiff receives its coal are under ten-year contracts for the output of the mines, aggregating 1,000,000 tons a year. It is the purchaser of 25,000,000 cubic feet of gas a day from the Seaboard By-Product Coke Company.

In Suit No. 3271 the plaintiffs are owners and operators of bituminous coal mines. The mines of Berwind-White are in Clearfield, Cambria, and Somerset Countries, Pennsylvania. It owns 3,036 private coal cars of the value of approximately $6,000,000.

The mines of the Westmoreland Coal Company are located in Westmoreland County, Pennsylvania. It owns 2,012 private coal cars of a value of approximately $4,000,000. The mines of the New River and Pocohontas Consolidated Coal Company are located in Fayette and McDowell Counties, West Virginia. It owns 1,000 private coal cars of a value of approximately $2,000,000. The mines of the Pennsylvania Coal and Coke Corporation are located in Cambria, Clearfield, Indiana, and Blair Counties, Pennsylvania. It owns 1,000 private coal cars of a value of approximately $2,000,000.

A large part of these coal companies' production of bituminous coal is contracted for and delivered annually to public utilities and other public use consumers.

As to all of the complainants in the several bills, it is a stipulated fact that the several common carriers over whose lines the privately owned coal cars of the plaintiffs move are and have been willing to handle them.

In all of the suits the Central Pennsylvania Coal Producers Association, a voluntary unincorporated association of coal operators who produce coal in the central Pennsylvania district; the Empire Coal and Coke Company, engaged in the business of mining and shipping coal in West Virginia; Pocohontas Fuel
86 Company, Inc., engaged in the business of mining and shipping coal in the States of West Virginia and Virginia; and the Pocohontas Operators Association, composed of numerous corporations engaged in the business of mining and shipping coal in

Virginia or West Virginia, were upon petition allowed to intervene as parties defendant. The members of the Central Pennsylvania Coal Producers Association produce approximately 30,000,000 tons of bituminous coal annually, a large proportion of which moves in interstate commerce.

The commission in its investigation heard testimony and arguments on the part of such individuals, corporations, and voluntary organizations as desired to be heard affecting their interests, including the associations of bituminous coal mine operators who have intervened in the present suit as parties defendant, representatives of organized labor in the bituminous coal industry, the railroads which were made respondents in the investigation, and, when the case was reopened, private car owners who claimed to be affected by the result of the controversy, including the parties to the bills filed and the intervening parties.

At the hearing in the present suit, the entire record before the commission was offered in evidence on behalf of all the plaintiffs except the railroads, whose counsel base their case entirely upon the reports and orders of the commission and testimony tending to show the manner in which the railroads, in view of their necessity to have and maintain a continuous and sufficient supply of proper bituminous coal for their operations as common carriers, are affected by the order.

The commission bases its order upon the legal conclusion that the assigned car rule, as practiced by the railroads, is an unjust and unreasonable regulation and practice prohibited by paragraphs (3), (6), (10), (11), and (12) of section 1 of the interstate commerce act, added to that section by the transportation act of 1920, and discriminatory as giving to the mines receiving assigned cars an undue and unreasonable preference and advantage over other mines, prohibited by section 3, and that the discontinuance of the rule is within the power of the commission under section 1, paragraph (14) and section 15. That it has power to determine what is a just and reasonable rule of distribution of cars among the coal mines served by any carrier by railroad prescribed by paragraph (12) of section 1, also added by the amendment of 1920.

The contentions of the several plaintiffs are that the order of the commission is beyond the scope of authority conferred upon the commission by Congress and the result of an erroneous conception by the commission of its powers.

That while in form it purports to prescribe regulations for the distribution of coal cars in time of car shortage, it is in substance and intent and attempt to regulate the mining industry, through distributing coal production ratably among all mines desiring to operate, in order to equalize working time and costs of mine production among all such mines by preventing the plaintiffs and others, through the use of railroad fuel cars or private cars, from securing their coal either by ownership of mines or by contract where they desire.

That the effect of the order will deprive the railroads of the benefit of such private car equipment as may not, under the order, be placed at mines by their owners.

That it denies to the plaintiffs the right existing at common law and preserved in the interstate commerce act and recognized by Congress to own and use private cars.

87

That it will deprive the plaintiffs of the value of their cars and of their right to have them used and operated in time of coal-car shortage without compensation and, therefore, is in violation of the fifth amendment to the Constitution.

That, as to the by-product coke companies and the coal companies, the order is unjust and unreasonable and discriminatory against them in that their competitors in the fuel oil and anthracite coal industries are not within the terms of the order, resulting in undue prejudice to the plaintiffs and undue preference and advantage of the plaintiff's competitors.

As to all of the plaintiffs excepting the railroads, that the findings of the unjustness and unreasonableness of the assigned-car rule and of discriminatory preference and advantage of the plaintiffs are unsupported by the evidence.

It is contended on the part of the Public Service Electric and Gas Company that it is a denial of its right under the laws of Pennsylvania and New Jersey to have its private coal cars transported by the Pennsylvania Railroad and other railroads subject to the said laws, which right is preserved by the interstate commerce act and the Constitution of the United States.

The plaintiffs, therefore, contend that the order of the Interstate Commerce Commission is unjust, unreasonable, arbitrary, and unlawful.

Those contentions are all traversed by the answers.

Before discussing the questions in issue, we will state the established rules as to the extent of the power of the court so far as applicable here upon the review of an order of the Interstate Commerce Commission.

It has been settled that the orders of the commission are final unless beyond the power which it could constitutionally exercise, or beyond its statutory power, or based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if, upon the facts found, it is confiscatory and in violation of the constitutional prohibition against taking property without due process of law, or the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power. In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the commission acted within its power. It will not consider the expediency or wisdom of the order or whether, on like

testimony, it would have made a similar ruling. The findings of the commission are made by law prima facie true, and the courts have ascribed to them the strength due to the judgment of a tribunal appointed by law and informed by experience. Its conclusion is subject to review, but when supported by evidence, is accepted as final. But the courts will not examine the facts further than to determine whether there is substantial evidence to sustain the order.

Int. Com. Comm. v. Union Pac. R. R., 222 U. S. 541; Intermountain Rate Cases, 234 U. S. 476; Int. Com. Comm. v. Ill. Cent. R. R. 215 U. S. 452; United States v. New River Co., 265 U. S. 533.

The duties of the carriers in relation to car distribution are imposed by section 1 of the interstate commerce act. Paragraph (6) makes it their duty to establish, observe, and enforce just and
88 reasonable regulations and practices affecting the facilities for "transportation," which term under paragraph (3) includes cars irrespective of ownership or of any contract express or implied for the use thereof.

Paragraph (10) defines "car service" as including the use, control, supply, movement, distribution, exchange, interchange, and return of cars and other vehicles used in the transportation of property. Paragraph (11) makes it the duty of the carrier to furnish safe and adequate car service and to enforce just and reasonable rules, regulations, and practices with respect to car service.

Paragraph (12) provides:

"It shall also be the duty of every carrier by the railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States."

Paragraph (14) empowers the commission, after hearing upon complaint or upon its own initiative without complaint, to establish reasonable rules, regulations, and practices with respect to car service, including the compensation to be paid for the use of any car or other vehicle not owned by the carrier using it.

Section 3 (1) forbids undue or unreasonable preference or advantage to any particular person or description of traffic or subjecting any particular person or description of traffic to any undue or unreasonable prejudice or disadvantage. The powers vested in the commission concerning the prohibitions against unreasonable

or discriminatory acts on the part of the carriers are contained in section 15 (1). Under that section, the commission, if it shall be of the opinion that any regulation or practice of the carrier subject to the provisions of the act is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, may determine and prescribe what regulation or practice is or will be just, fair, and reasonable to be thereafter followed.

The effect of the order upon the plaintiff's will be considered before examining the grounds upon which the commission bases its conclusion that the assigned car rule is unjust and unreasonable in that it is unjustly discriminatory or unduly preferential or prejudicial. It is conceded by all parties that the order abolishes the assigned car rule absolutely. It is also conceded that, during periods of abundant car supply the assignment of railroad fuel cars or private cars is of no great importance to the railroads or the owners of private cars.

We have seen that, in order that the public service corporations, the steel manufacturing companies, and the by-product coke companies may successfully maintain production through the operation of their plants, and the coal companies may maintain a regular supply of fuel for public and private use, they must, by keeping their mines in operation, be able to ship a constantly sufficient quantity of coal of selected kinds and quality for their needs. In order to overcome the difficulties arising from an irregular uncertain coal supply in times of railroad car shortage, therefore, the plaintiffs have laid out large sums of money in supplying themselves with private cars in order that they may be assigned to mines owned or leased by them or with which they have contracts for total or partial output without being dependent upon the available supply of system cars to be prorated among the mines, and the effect of the order of the commission is to deprive them of the use of these cars in the time of coal car shortage in numbers in excess of the pro rata distributive share of system cars available for distribution.

To illustrate, we will assume that in a given mining district a group of mines served by system or railroad-owned cars has aggregate ratings of five hundred cars and that a mine served by private cars has a rating of one hundred cars; that the number of cars available, including private cars, is such that fifty per cent distribution prevails, but there are present one hundred private cars. In that case, only fifty private cars can be placed for loading and moving; the other fifty private cars must either stand idle on the sidings or will be appropriated for the use of others than their owners.

The same situation will result as to the fuel cars of the railroads and, in each case, notwithstanding the fact that during such coal car shortage there may be no corresponding shortage of other railroad facilities, such as track, motive power, and labor. This is so because, during car shortage the order is to be universally applied,

whether or not the railroad system has ample facilities for movement of the cars and whether or not such facilities are, by reason of the order, excluded from service through which the railroad company could be carrying on its operations and earning freight.

The right to the use of private cars is clearly recognized by the law. That is apparent in various sections of the interstate commerce act. They are included in paragraph (3) of section 1 as instrumentalities of shipment or carriage; in paragraph (12) in the requirement that the carrier, in times of car shortage, shall count each and every car furnished to or used by any mine for transportation of coal against the mine; in paragraph (14) as cars not owned by the carrier using them; and in paragraph (15) their use is excluded from the power conferred by Congress upon the commission to make directions with respect to car serivce by confining its power in making such directions to car service without regard to the ownership of cars as between carriers; also by paragraph (13) of section 15, which recognizes the right of the shipper to furnish its own instrumentalities of transportation and to receive just and reasonable compensation therefor.

This right of private car use and ownership is recognized by the commission. In Exhibit "G" ("Assigned cars for bituminous-coal mines," 93 I. C. C. 701) at page 278, the commission says:

"The Congress has thus recognized the use of the privately owned cars and has limited our power to touch that right to our power over the carriers. We cannot declare that right unreasonable or unjustly discriminatory, or unduly prejudicial or unlawful, because of something that is inherent in the nature of that right, because by so doing we would be abrogating a right which
90 the Congress has recognized and which we have stated could only be abrogated by appropriate legislation."

And in Exhibit "E" ("Assigned cars for bituminous coal mines," 80 I. C. C. 520), at page 96, they say:

"The use of private cars by railroad carriers has been recognized by Congress, which has provided for the control of the use of such equipment by us, under the provisions of the interstate commerce act by means of a mandate addressed to the carriers subject to our jurisdiction. We do not deal with the private-car owner as such."

It is recognized by the courts (see Ellis v. Interstate Commerce Commission, 237 U. S. 434).

This valuable legal right in the ownership of private cars, in which sums of money amounting to millions of dollars have been invested by the plaintiffs, furnishes the only means by which the car owners can procure an adequate fuel supply in periods of recurrent car shortage. Except during such periods, the private cars are of no value, for the owners' compensation for their use, fixed by the commission under section 1 (14), is but one and one-half cents per mile, which, it is found, does not pay the cost of their maintenance and repair. The commission, having no power delegated by

Congress over the private car owner, has, by its order, through its power over the carriers, abolished the use of private coal cars, except subject to the pro rata distribution prescribed, for the only practical purpose to which they may be put, and has thereby deprived the private-car owners of the full use and enjoyment of their rights to operate their mines and of their full rights under their contracts to supply themselves with coal from other mines. There is an undoubted purpose appearing throughout the commission's report to accomplish the ultimate result of entirely abolishing the use of the private coal car, unless, indeed, it is intended by the commission in the application of its order to the car service rules of the railroads to require their distribution among the commercial lines as part of the available equipment of the railroads. That subject will be discussed elsewhere.

The obvious and conceded effect upon the railroads in times of coal-car shortage will be that no railroad fuel may be transported from the mines operated for the production and shipment of railroad fuel in excess of the capacity of the cars allotted under the pro rata distribution.

The primary object of a railroad company is to operate its railroad. The primary need is fuel for its locomotives. That self-evident fact is well and tersely stated in the brief for the railroads, thus:

"Locomotive fuel coal is burned for just one purpose—to give the public regular and ample freight and passenger transportation service. If the fuel supply fails, the service fails; if the fuel supply deteriorates, the service deteriorates. The connection and result are immediate."

And by the commission in its first report, thus:

"Certain premises meet general acceptance in this record. It is recognized that the importance of the railroads in the distribution of coal and other commodities, and their general dependence upon bituminous coal in producing transportation, require that in some lawful way they may be assured of a steady supply of suitable coal. It is likewise generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply 91 will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires."

That the fuel supply of the railroads will be seriously curtailed and insufficient for their legitimate needs in operating their railroads unless they entirely change their methods of procuring coal, cannot be doubted as a necessary consequence of the enforcement of the commission's order, for it nowhere appears that, under the assigned car rule they have obtained more than sufficient supply for their needs. The necessity of a departure from their present methods through ownership or lease of mines, or entire or partial output contracts is conceded in the commission's reports. The commission

in order to meet that necessity approves of the suggestion by the complaining coal operators of the following courses for avoidance of shortage of fuel during car shortage in order to overcome the consequences of the railroads having to abandon their present methods of obtaining their fuel supply:

(1) By storing more substantial amounts of fuel coal at points of consumption during periods of inactive demands upon the part of the public which, it is claimed, can be done without undue expense.

(2) By a wider distribution of fuel contracts among producing mines.

(3) By contracting that a certain proportion of the coal produced and to be shipped shall be carded for railroad use before deferred customers are supplied.

And (4) by order of this commission suspending the applicable rules as to equal distribution in the special cases of real emergency under the powers conferred by paragraph (15) of section 1 of the act.

It is apparent, therefore, that it is the conclusion of the commission that the abolishment of the assigned car rule will compel the railroads to adopt some other methods of procuring the coal necessary for railroad fuel. Methods (1), (2), and (3), suggested by the commission, involve subjects over which Congress has not invested the commission with authority as an incident to its control of car distribution. It is not shown that the adoption of any of the suggested methods tends toward the efficient and economical management over which the commission is given control under paragraph (2) of section 15a, and the authority there conferred is only in connection with the power to prescribe just and reasonable rates. And Congress has not otherwise invested the commission with control over the expenditures of railroads except under the provisions of section 10 of the Clayton Act, 38 Statute at Large 730, which has no relation to the matters in issue here.

In discussing the four methods of meeting the situation, the commission says in its report:

"Perhaps singly none of the suggested courses would be selected, but in combination they would greatly mitigate the results which the respondents claim would follow the abolition of the assigned car privilege."

The effect upon the railroads if either methods (1), (2), or (3) is adopted will be that they will be deprived of the use of their property in their mines, in the enjoyment of a free right to contract for their fuel supply, and of the right to continue the internal management of their business in accordance with their own judgment and discretion.

92 It is apparent either that by its order, through indirection, the commission is assuming to deprive the owners of the use of their private cars and to regulate the railroads in matters over which it has no control, or that, if the order made is lawful and

within the powers of the commission, those results are necessary incidents, disadvantageous though their effect upon the plaintiffs may be, to a lawful exercise of the commission's power. The object to be accomplished by the order is the correction of conditions in the bituminous coal mining industry said to arise from the alleged unjust, unreasonable, and unduly discriminatory effect of the assigned car rule in giving an undue preference and advantage to the mines supplying coal for the railroads and private car owners through the use of assigned cars.

As bituminous coal is ordinarily run direct from the mine tipple into the railroad car, the operation of mines is affected whenever enough coal cars to meet all the demands are not immediately available at the mines.

It is shown in the case and found by the commission that, as a general rule, mines not receiving assigned cars during shortage periods have been operated at greater cost and with more intermittent working time and, therefore, with less steady employment for labor than mines receiving assigned cars. As a result of the greater proportionate overhead cost to mines intermittently operated, the operators become discontented and as a result of intermittent employment labor becomes discontented, and the better and more efficient mine workers are attracted to mines giving the steadier employment. The railroad fuel cars and private cars are provided for the purpose of keeping a constant and regular movement of coal supply, so that the mines to which they are assigned have the advantage over other mines not so provided, and the commission states regarding the assigned car rule:

"It produces great and harmful inequalities in working time in near-by competing mines," meaning, of course, as between those receiving and those not receiving assigned cars.

Another factor found by the commission and conceded by all parties is that the bituminous coal mining industry is highly overdeveloped. The commission says:

"There is enough bituminous coal in the ground in this country to more than supply the demands of all consumers for a long period. There are more than enough miners to produce coal for all purposes. There are more mines than is consistent with the most efficient use of equipment, and their aggregate capacity greatly exceeds the country's demand."

Moreover, the demands for coal are not constant. They are seasonal, and as a result the commission finds there are frequent seasonal or local car shortages. Commenting on the effect of the overdevelopment upon the car supply, the commission finds:

"In times of plentiful car supply or when the demand for bituminous coal is low, many small or weak mines, which are the least economical to operate, are forced to close. Car shortages are usually accompanied by a condition of alarm on the part of the consuming public and of a demand for coal, which becomes more excited as

the coal car supply lessens. This encourages the opening of the smaller and weaker mines, with the recurrence of a poor car supply, and the paradox is presented that as the car supply becomes worse the capacity of the open mines increases at even greater rate. This makes more difficult the process of distribution, as the
93 cars in service cannot be handled as efficiently nor can as much coal be transported in the aggregate as if fewer mines were demanding service. The increase in demand and mine rating must be met by a pro rata distribution of the available cars, and thus the supply, already diminished because of the lesser efficiency possible in movement, is further diluted in the process of ratable distribution according to the enlarged capacity."

The commission further finds—

"That the orders by mines in times of car shortage taken as the base to which each of the percentages stated apply, which approximate the mine ratings, are notoriously far greater than the normal mine capacity, or the ability of the carrier to transport or the country to consume bituminous coal, when taken in the aggregate."

During the period of coal shortage, when the productive capacity of the commercial mines is increased because of the unusual activity of mines that have not been active during the period of sufficient car supply, the mines receiving assigned cars are conceded to be able to operate on full time, as they have been doing during other times of abundant car supply. While the commission finds that the operators are not unanimous in their opinion that the result of the assigned car practice has been detrimental to their industries, it does state as established that the general effect of the assigned car practice is to attract as many desirable miners as can be given employment to the assigned car mines and away from the commercial mines. Often these two classes of mines are located close to each other and the miners, paid upon a quantity basis in the commercial mines, are rendered discontented when they are compelled to remain idle a large part of the time during a car shortage while neighboring mines with assigned cars are operating on a substantially full-time basis.

The commission finds further—

"The result of the inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production, and the amount of such increased cost is considerable and important. Mine production costs rise because of the diminished car supply."

The commission also finds that the supply of cars at commercial mines would be increased by abolishing the assigned car rule. That conclusion is based upon tables showing that, if all the cars on certain railroads at certain periods, assigned and unassigned, had been distributed pro rata among all the mines in certain districts, the percentage distributed to the commercial mines would have been

increased. Necessarily that conclusion assumes the right of the railroads to distribute not only railroad fuel cars but private cars to other mines than those shipping coal to their owners.

These then are the disadvantages and prejudices under which, in the view of the commission, the shippers of coal from commercial mines are placed through the practice of the assigned car rule: The mines are operated at a higher cost than those served with assigned cars; they are subjected to labor troubles through the fact that the working time at their mines is more intermittent than at mines receiving assigned cars; and they receive a lower percentage of their rated capacity than they would if all cars were allotted pro rata.

It is also held by the commission that the private car
94 owners are preferentially treated in that they receive more than their fair share o fthe use of railroad facilities, such as locomotives, tracks, terminals, and labor, which they do not own—this because, under the assigned car rule, assigned cars may be placed at the mines in excess of the pro rata allotment to the mine, provided they are counted against the share of system car distribution to which the mine is then entitled. Such excess naturally causes the use of a greater proportion of the railroad's motive power, trackage, etc., than if the excess of cars was not placed and moved.

The commission mentions as another factor of preference the fact that private cars, because they are usually operated in shuttle service, moving regularly between points of destination, and thus avoid the switching and spotting service necessary in commercial shipments, are likely to receive preferred treatment.

Although all of the coal-carrying railroads of the country were respondents in the proceedings before the commission and opportunity was afforded to all opponents of the assigned car rule to introduce evidence concerning preferences in the treatment of private car owners, the specific findings of the commission in relation to such preferences are summarized as follows:

"The record indicates that during 1920 and the summer of 1922 certain carriers, particularly the Pennsylvania, Chesapeake & Ohio, and the Louisville & Nashville, accorded to private car owners a greater use of their facilities than they should properly receive. The extent to which this was done, however, is not clearly established of record. The conditions of the past year were abnormal. The carriers' locomotives, due to the shopmen's strike, were in poor condition. The strike in the bituminous coal fields made a heavy demand for coal from the nonunion fields, a large part of which are located upon the lines of the three carriers mentioned, and taxed the carriers' facilities. The termination of the coal strike increased the demand for coal, with a resulting greater burden upon the carriers' already overtaxed facilities. In the congestion when the carriers were unable to transport promptly all traffic offered them, certain of them did prefer the handling of private cars from motives of convenience."

It is further stated in the report:

"There are other practices of some of the carriers in the handling of private cars which are not free from criticism. We have in mind particularly the placement for the private car owner of its own cars at certain mines to be loaded with coal for the owner's use from day to day and the placement of system cars at the same mines on alternate days; if on the days on which such private cars are placed they exceed the pro rata share of cars to which that particular mine would be entitled if dependent wholly upon system cars, no subsequent adjustment of such overage is made. Any attempt on our part to mitigate the bad effects of such a practice is but temporizing. The private car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or he is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable."

Coming to the issues of law raised by the pleadings, it is contended by the plaintiffs that the commission is without power to abolish the assigned car rule because that rule, as embodied in the Hocking Valley-Traer rule, was enacted into statute by paragraph (12) of section 1 of the interstate commerce act. The commission
95 holds that the paragraph does not, in terms, prohibit the practice of assigning cars for railway fuel and private cars to coal mines under the limitations fixed in the Hocking Valley and Traer cases, but that the commission has power under paragraph (14) of section 1 and section 15 to determine what is a just and reasonable distribution of cars among the mines and whether the practice under the assigned car rule of counting each and every car against the mine is just and reasonable, and, if found discriminatory, to require the railroads to abolish it as an unjust and discriminatory practice. The commission concedes that the phrase "count against the mine" in paragraph (12) has been used by it as not inconsistent with the practice prescribed in the Hocking Valley and Traer cases and in the Hillsdale case, 19 I. C. C. 356. The Supreme Court used the same phrase in the same sense in Interstate Commerce Commission v. Illinois Central Railroad, 215 U. S. 452.

When Congress had before it the transportation act of 1920, which carried with it an amendment to the interstate commerce act which became paragraph (12) of section 1, the House Committee on Interstate and Foreign Commerce had under consideration at the same time Senate Bill No. 3288, which, in addition to the requirement that the carriers make just, reasonable, and nondiscriminatory distribution among the mines of all cars available for the transportation of coal in times of coal shortage and the counting of each and every car against the proportionate distributive share of the mine, contained the following language:

"And that no cars shall be furnished to or used by any mine for the transportation of coal during a car-shortage period in excess of the proportionate distributive share of such mine."

The House committee called before it Commissioner Clark, chairman of the Interstate Commerce Commission, who fully apprised the committee of the fact that the railroad administration had adopted the car-distribution rule laid down by the commission in the Hocking Valley and Traer cases, and had followed the practice of counting assigned cars against the distributive share of the mines in accordance with that rule. He stated to the committee that he thought that was the sound rule and the right rule, that it had stood the test of adjudication at the hands of the commission and at the hands of the Supreme Court of the United States, and concluded:

"So I can not see any possible objection to carrying it into the statute."

In the report to the House of Representatives on the bill which afterward became paragraph (12), the committee, after explaining the provisions of the proposed statute, said:

"Paragraph (12) of the amended section incorporates in the statute a rule laid down by the commission and upheld by the Supreme Court as to just and reasonable distribution of coal cars among the mines, thus avoiding any possibility of the recurrence of the evil of what is known as the assigned-car rule."

The Senate bill and the House bill went to conference, and the Senate bill prohibiting the furnishing or use, during coal-car shortage, of cars in excess of the proportionate distributive share of the mine was rejected and the House bill became the law.

In the commission's report to the Senate on June 11, 1920 (assignment of freight cars), 57 I. C. C. 760, it is stated:

96 "The commission is of the opinion that paragraph (12) of section 1 of the interstate commerce act does not change the rule of law laid down in the Hocking Valley and Traer cases, supra. The paragraph states in statutory form that which had theretofore been the law pursuant to the decisions of the commission and of the Supreme Court of the United States."

The legislative history of the bill and its construction by the commission without any action on the part of Congress to change it is highly persuasive of the construction now urged by the plaintiffs but rejected by the commission in the present proceeding. We find it, however, unnecessary to base our conclusions in the case upon the construction of paragraph (12) of section 1, although its legislative history in connection with the administrative history of the assigned-car rule has a bearing upon the question of the reasonableness of the order of the commission which is before us.

While the railroads are required to make just and reasonable distribution of cars and reasonable rules and regulations, it is also contemplated and provided in the act wherever power to make orders is conferred by Congress upon the commission that they shall be just and reasonable. Congress, however, has conferred broad administrative powers upon the commission, and the question as to what is a just and reasonable rule is an administrative question for the

commission to decide. Morrisdale v. Pennsylvania Railroad, 230 U. S. 304; Cleveland and Western Coal Co. v. Baltimore and O. R. Co., 283 Fed. 995. Therefore, unless an order of the commission is not within the powers conferred upon it by Congress, it is for the commission and not for the courts to determine what is a just and reasonable rule. The interstate commerce act should be interpreted reasonably so as to accomplish its great purpose, to wit, to secure just and reasonable charges, to prohibit unjust discrimination, and to prevent undue and unreasonable preference. New Haven Railroad Co. v. I. C. C., 200 U. S. 361. But the discretion of the commission in determining what is unjust and unreasonable must not be exercised so arbitrarily as to transcend the power conferred by Congress. U. S. v. New River Co., 265 U. S. 533.

The gist of the finding of the unreasonableness of the assigned-car rule is that it is unjustly preferential and unduly discriminatory. But not every discrimination is illegal—only that which is unjust and unreasonable. The law does not attempt to equalize fortunes, opportunities, or abilities. I. C. C. v. Diffenbaugh, 222 U. S. 42. And not every advantage that may inure to a shipper as the result of the position of his plant, his ownership, or his wealth is a preference. Ellis v. I. C. C., 237 U. S. 435.

The commission in its report sets forth its purpose to give effect to the uniformity and equality of treatment which the act is intended to secure, citing Pennsylvania Railroad v. Stineman Coal Mining Co., 242 U. S. 298; to compel the carrier as a public agent to give equal terms to all; to cut up by the roots every form of discrimination, favoritism, and inequality, and to place all shippers upon equal terms, citing New Haven Railroad v. I. C. C., 200 U. S. 361; Louisville and Nashville Railroad v. Mottley, 219 U. S. 467; United States v. Union Stock Yard, 226 U. S. 286; and citing the Supreme Court's language in the Illinois Central case as to the commission's power to require "a just and equal distribution and the prevention of an unjust and discriminatory one" and
97 to the reference by the court to the carriers' "duty to make equal distribution of cars" and "the duty of equality of treatment."

But if, in applying such terms to the situation here, the commission has applied them without regard to the connection in which they were employed, and if the basic conception of the commission is that the use by the railroads and the private car owners of all cars in excess of the general pro rata allotment is per se preferential, constituting an inequality in violation of the act, and that, under the duty to enforce equality, what is meant is absolute equality, we think such conception is erroneous.

The act does not require that all shippers shall be treated alike under any and all circumstances. In providing that car distribution shall be reasonable, that discrimination shall not be unjust, and that preferences or advantages shall not be undue or unreasonable, it is

not implied that strict uniformity and equality are to be enforced; but it is implied that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of producers, shippers, and consumers should be considered by the tribunal appointed to carry into effect and enforce the provisions of the act. There must be a consideration of the question whether the transportation effected is under "substantially similar circumstances and conditions." Texas and Pacific Railway v. I. C. C., 162 U. S. 197.

In order to establish discrimination, the conditions as to service must be substantially alike. A. T. & S. Railroad v. D. & N. O. Railroad, 110 U. S. 667.

But the commission has determined that it is unlawfully discriminatory for the railroads during car shortage to transport the fuel necessary for their operations as carriers and for owners of private cars to ship and transport coal in their private cars, in greater quantities than their pro rata allotments, in absolute numerical equality with shippers from mines neither shipping railway fuel nor owning private cars, and that any departure from this rule is preferential and discriminatory, notwithstanding conditions under which ample facilities are available for the purpose, and those facilities of transportation may be used without depriving the shippers from other mines of their use. So far as the latter are concerned, the use of locomotives, labor, tracks, and terminals in excess of what are sufficient to move their pro rata share of cars does not diminish nor increase their means of transportation, but their demand, acceded to by the commission's order, is that, inasmuch as such facilities are of no advantage to them, their use by transportation of railway fuel and private cars be prohibited as preferential and discriminatory.

While in the Illinois Central case it has been settled that the commission has power to regulate the distribution of railway fuel cars and private cars in time of shortage to prevent discrimination, and that they may be taken into consideration as a basis for the capacity rating of mines, and that the railroads may be required by the commission to take them into account in order to prevent a preference of the mine to which such cars are assigned over other mines, yet there was nothing decided in that case adjudging as an unlawful discrimination the assignment of either class of cars in excess of the pro rata share of the mine so long as they are counted against the distributive share of the mine. The finding of discrimination was based upon the fact that the mines served with assigned cars were under the rule then in effect able to secure not only as many assigned cars as the facilities of the railroad permitted it to deliver, but,
98 in addition thereto, the same proportionate share of system cars as mines not receiving assigned cars. That practice resulted in a mine, already abundantly supplied with assigned cars, being further supplied with its full quota of system cars under the pro rata distribution then in effect, thereby diminishing the number

of system cars distributable and depriving the commercial mines of their percentage of that number of system cars. This was held unjust and unreasonable and unlawfully discriminatory. And the same discriminatory effect was present in the case of a joint mine in United States v. New River Co., 265 U. S. 533. The practices passed upon in those cases were essentially different from the practice under the assigned car rule which the commission then held to be just and reasonable. Under the assigned car rule the mines not receiving assigned cars are not deprived of any advantage pertaining to commerce enjoyed by the railroads or the private car owners which the commercial mines are not free also to have and enjoy. True, they may not have the financial resources to provide themselves with private cars, and they may not have the benefit of sales of railway fuel, but that is one of the conditions the act does not attempt to equalize. They are not through the hauling of assigned cars deprived of the use of any of the railroad facilities, unless there is during car shortage a shortage of other facilities. But the order is not conditioned upon such circumstance. It is to be universally applied under all circumstances. It is not free from doubt that it is the conception of the commission that the commercial mines are deprived of their rightful share of the cars devoted to carrying railway fuel and of privately owned cars, and that the railroads, through the power of the commission over them, in order to make more cars available for pro rata distribution may be compelled, so far as their railway fuel is concerned to adopt one of the methods approved by the commission as a substitute for their present method of obtaining their supply through ownership of mines or through contracts with mines; and, so far as the private cars are concerned, the railroads may be required by the order of the commission, to distribute the private cars among mines to which they are not assigned by their owners.

The primary duty of the railroads is to serve the public by transportation of freight and passengers and in the transportation of coal to carry it to its destination for consumption for public and private uses and for distribution for the manufacture of other commodities supplied to the public. If the supply of fuel coal stops, the transportation over the railways must stop and the public generally deprived of its necessities.

But it is contended that the needs of the railroads for fuel can be adequately met by the order of the commission suspending the applicable rules as to equal distribution in special cases of real emergency under the powers conferred by paragraph (15) of section 1 of the act. As heretofore stated, there is no finding anywhere in the report that the railroads have mined or purchased under contract and shipped greater quantities of fuel coal than has been necessary for the operation of their roads at any time during prior car shortages. By order of the commission, however, they are prohibited from using for their fuel necessities more cars during shortage

periods than their distributive pro rata share with commercial mines. They may not find it to tend towards efficiency or economy to adopt any one of the other methods proposed for obtaining
99 their fuel supply. Storage in large quantities may be impracticable and would appear of necessity to be more expensive than the present method of storage in the mine, as it would involve additional use of cars and locomotives to carry the coal from the mine to the point of storage and the cost of a second loading after the cars had been loaded at the tipple of the mine and transported and unloaded at the storage pile. The second method would probably lead to demands on the part of the mines, among which their orders would be distributed, for excessive prices for coal, which, the commission finds, obtain in time of car shortage, and the further probability should be considered that the necessary class and quality of fuel coal varies with different conditions of transportation. The same difficulties would be present, no doubt, in the suggestion of contracting for preferential deliveries by having coal carded at the mines. And it is not shown that preferential contracts would aid in any manner toward the desired result of increasing the available system cars for general distribution.

We think it clear that the commission has misconceived the purpose of paragraph (15) of section 1. It empowers the commission to act when it is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists. It is then empowered to suspend the operation of any or all rules, regulations, or practice then established with respect to car service and to make just and reasonable directions with respect to car service without regard to ownership as between carriers. The clear intent of paragraph (15) is that it shall apply only in cases of emergency—that is, of unexpected conditions which may arise and which have not been sufficiently foreseen or long enough in effect to afford an opportunity to provide for them by action on the part of the carriers on their initiative or under the ordinary supervisory direction of the commission. The emergency power is not given to the commission to provide for conditions which are anticipated as the necessary result of standing orders prescribed in accordance with the other paragraphs of the act and thus to add to the ordinary power exercised by standing orders. Moreover, the emergency orders of the commission must be just and reasonable, yet it is the apparent intention of the commission to decide in advance that it will, under its emergency power, substitute for what it now finds to be a just and reasonable order emergency orders putting into effect in whole or part the rule which it is now condemning as unjust, unreasonable, and discriminatory.

While the commission has power in case of necessity to establish priority orders for the delivery of railroad fuel, it has not had conferred upon it the power to determine for the railroads the business methods and practices by which they may in the ordinary conduct

of their business provide themselves with fuel. The mining of coal is not commerce. Hammer v. Dagenhart, 247 U. S. 251; United Mine Workers v. Coronado Coal Co., 259 U. S. 344. While company fuel cars are instrumentalities of commerce and subjects of control in administering the act, I. C. C. v. Illinois Central Railroad, supra, and control of their use may incidentally in a proper case require the carriers to change their methods of obtaining fuel as an incident of lawful control, that effect of the commission's order, when considered in connection with the ground upon which the order is based, leads to the conclusion that, unless cogent necessity appears for that effect, the control by indirection which causes it is exercised in an arbitrary and not a just and reasonable manner.

100 It may not be seriously contemplated that the commission's order requires the railroads to distribute the surplusage of private cars in time of shortage among shippers who are not their owners, yet the tabulation hereinbefore referred to, upon which it bases its finding that the abolishment of assigned cars would increase the distributive shares of all mines, and contentions that private cars are "leased" to and part of the equipment of the railroads justifies an inference of a claim to power to so dispose of private cars. So far as it appears, the only arrangement between the private car owners and the railroads is that the cars shall be placed at the mines to which assigned and the railroads compensate their owners for their use at a rate fixed by the commission. We have seen that the right to the use of the privately owned car is recognized by Congress. It is recognized in the reports before us and in prior reports of the commission as a right which Congress alone may abolish. Ruttle v. Pere Marquette Railroad Co., 13 I. C. C. 179; In re Private Cars, 50 I. C. C. 652; and Hillsdale Coal and Coke Co. v. Pennsylvania Railroad Co., 19 I. C. C. 356; and in the decisions of the State and Federal courts; Logan Coal Co. v. Pennsylvania Railroad Co., 154 Fed. 497; United States v. B. & O. Railroad Co., 154 Fed. 108; 165 Fed. 113; 215 U. S. 481; Boyle v. P. & R. Railroad Co., 54 Pa. 310.

Private cars are in use generally upon the railroads for transporting not only coal, but oil, grain, flour, meat, fruits, vegetables, and numerous other commodities. While the commission has power to regulate their use for their owner's purposes by a lawful order, their distribution to other shippers in order to bring about a greater pro rata allotment would be confiscatory and beyond the power conferred by Congress, and the theory of an increase pro rata allotment is, therefore, untenable.

The universality of the order is such that it entirely ignores all conditions except by comparison of mines served with private cars with commercial mines, showing inequalities in time of coal-car shortage in costs of operation, and, through intermittent operation, in difficulties in affording constant employment to mine workers, thereby causing unequal conditions in mine labor, so that, even

though the railways are abundantly able through sufficient motive power, track and terminal facilities, and employees to handle all the coal to be carried for fuel or upon private cars, they are forbidden to do so and the cars must remain idle. It appears only necessary to state this result to demonstrate its unreasonableness. For the order and the report of the commission entirely leave out of consideration, in applying what is intended as a just and reasonable rule, the existence of widely varying conditions, viewing them as if constant and uniform. The order applies to all the railroads of the country extending over a wide expanse of territory and embracing an infinite variety of conditions. It applies to all divisions of all rail carriers in the United States, and at all times when need for allotment arises, to every case, wholly regardless of differentiating conditions.

If the discrimination found by the commission is based upon the disadvantages to the commercial mines through the use and enjoyment by the railroads and private car owners of assigned cars in excess of the general distributive shares of their mines, the commission has plainly exceeded its power in an attempt to regulate the bituminous coal-mining industry. The commission finds that that industry is highly overdeveloped; that many commercial mines
101 do not operate at all except during periods of car shortage, and then the rating of commercial mines is highly increased over their normal rating. Whether the conditions of disadvantage are the result of the railroads continuing during car shortage to obtain their normal supply of fuel, and the private car owners to have their cars placed in normal numbers for the purpose for which they were acquired, or whether they are caused by the overdevelopment of the industry, such conditions, while a matter of public interest and of concern to the Interstate Commerce Commission, are not within the power of the commission to control except as incidental to the exercise of power in correcting discriminatory and preferential practices by the railroads.

As our conclusion is that the practice under the assigned-car rule is not per se preferential or discriminatory, the question remains whether the report justifies the conclusion that the right to their use has been exercised by the railroads in such a discriminatory and preferential manner as to justify the conclusion, it must be abolished in toto in order to eradicate discriminatory practices and preferences. In examining the several charges of preference and discrimination, we do not find that that conclusion has support in view of the universality of the order. That the owners of private cars enjoy the use of a disproportionately large part of the facilities of the carrier is not discriminatory unless other shippers are thereby deprived of the use of those facilities and that is not the case unless there is a shortage of such facilities. That they move in train lots in shuttle service is an incident flowing from their movement between mines and the fixed locations of their owners' plants or yards, and no evidence was before the commission nor finding made that by

reason of that incident to their operation they have received preferential treatment.

If, as found by the commission, private cars are placed at certain mines to be loaded from day to day and system cars are placed at the same mines on alternate days, and if in case the number of private cars exceeds the pro rata share to which that mine would be entitled if dependent wholly upon system cars, no subsequent adjustment of such overage is made, the power to abolish their use does not follow, for Congress has not included the power, under cover of regulation, to abolish what it has sanctioned.

While the commission finds that on three railroads mentioned in the report private car mines during car shortage in 1922 received practically a full car supply, while other mines on the same division of the same railroads received a comparatively small percentage of the cars ordered, it is not found that this was the result of any undue preference of private cars but was caused by abnormal conditions, particularly the strike of the railroad shopmen and the bituminous coal miners.

We find frequent expressions in the report of the commission to the effect that, because of the assigned-car rule, discrimination or preference may result, but findings of actual discrimination and preference, granting that they are sufficiently established to justify orders of the commission prohibiting the carriers from pursuing such practices, are not sufficiently general in their scope nor substantial in their results to support the sweeping order of the commission. An order based upon discrimination must be restricted in its scope to the discrimination actually shown. I. C. C. v. Diffenbaugh, supra; Central Railroad of New Jersey v. United States, 257 U. S. 247; Wisconsin Rate Cases, 257 U. S. 563; New York v. United States, 257 U. S. 591; American Express Co. v. Caldwell, 244 U. S. 617.

102 We find no substantial foundation of preference and discrimination upon which to base the universal scope of the order. Through its operation the railroads will be deprived of the use of their mines and of their right to exercise their judgment in procuring their coal supply and the other plaintiffs of the use of their mines and their private cars.

Private property can not be taken for public use without just compensation and can not be taken for private use with or without compensation. The owners of private cars have acquired valuable property rights in order to carry on vast industries serving the public with its necessities in reliance upon the assigned car rule, and as the order in question necessarily makes no provision for compensating the owners for the deprivation of their property, it is manifest that its effect is the taking of property without compensation, and in violation of the fifth amendment to the Constitution.

We conclude that the order of the commission is unjust and unreasonable and an unlawfully arbitrary exercise of power; that it undertakes by indirection to regulate the soft-coal industry in

matters which do not constitute transportation service relating to commerce and are not within the regulatory power of the commission; that it assumes without authority of law to restrict the lawful right of the railroads to obtain by purchase or ownership of mines the supplies necessary to their operation in the service of the public; that the use of the railway fuel cars and private cars under the assigned car rule is not per se preferential; that there are no sufficient facts set out in the commission's report upon which to base findings of such discriminatory and preferential practices as to justify an order of universal application such as has been entered in this case; that it is confiscatory in violation of the fifth amendment of the Constitution in depriving the railroads of the use of their mines and the private-car owners of the use of their mines and cars; that the order is, therefore, beyond the authority of the commission, without warrant of law, and null and void.

Decrees will, therefore, be entered setting aside, annulling, and suspending the order and enjoining its enforcement. Counsel may prepare and present decrees in accordance herewith.

103–104 In United States District Court

[Title omitted.]

Final decree

Filed Dec. 15, 1925

This cause came on to be heard at this term on petition, answers and evidence submitted, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

1. That the order of the Interstate Commerce Commission in the case entitled "Assigned cars for bituminous coal mines" (In re Distribution among coal mines of privately owned cars and cars for railroad fuel), No. 12530, entered at a general session of the commission at its office in Washington, D. C., on June 13, 1923, as affirmed by its further order of December 23, 1924, be and the same is hereby set aside, annulled, and suspended.

2. That a permanent injunction be and the same is hereby granted and issued out of this court as prayed in the bill of complaint and the defendants and each of them, their officers, members, examiners, agents, and attorneys, and any and all persons whomsoever, be, and they are hereby, permanently restrained and enjoined from enforcing or in any manner attempting to enforce or carry out the said order or any of the terms thereof.

By the court:

VICTOR B. WOOLLEY,
United States Circuit Judge.
J. WHITAKER THOMPSON,
W. H. S. THOMSON,
United States District Judge.

105 IN UNITED STATES DISTRICT COURT

[Title omitted.]

Petition for appeal by United States and Interstate Commerce Commission

Filed Feb. 6, 1926

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, feeling themselves aggrieved by the final order or decree of the District Court made and entered December fifteenth, 1925, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

They pray that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE W. COLES,
United States Attorney, Eastern District of Pennsylvania.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
R. GRANVILLE CURRY,
Solicitor for Interstate Commerce Commission.

106 In United States District Court

[Title omitted.]

Assignments of error of the United States and Interstate Commerce Commission

Filed Feb. 6, 1926

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, now come, by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered December fifteenth, 1925.

The District Court erred:

I. In suspending, annulling, and enjoining the commission's order of June 13, 1923, as affirmed by its further order of December 23, 1924.

II. In not dismissing the bill of complaint for want of equity.

III. In receiving and considering the oral testimony offered in open court by the plaintiffs over the objections of the counsel for the

United States and the counsel for the Interstate Commerce Commission.

IV. In substituting its judgment for the judgment of the commission concerning a regulation pertaining to the distribution of cars for the transportation of coal in interstate commerce.

V. In holding that said order of June 13, 1923, as affirmed by said order of December 23, 1924, "is unjust and unreasonable and
107 an unlawfully arbitrary exercise of power."

VI. In holding that said order of June 13, 1923, as affirmed by said later order, "undertakes by indirection to regulate the soft-coal industry in matters which do not constitute transportation service relating to commerce and are not within the regulatory power of the commission."

VII. In holding that said order of June 13, 1923, as affirmed by said later order, "assumes without authority of law to restrict the lawful right of the railroads to obtain by purchase or ownership of mines the supplies necessary to their operation in the service of the public."

VIII. In holding "that the use of the railway fuel cars and private cars under the assigned car rule is not per se preferential."

IX. In holding "that there are no sufficient facts set out in the commission's report upon which to base findings of such discriminatory and preferential practices as to justify an order of universal application such as has been entered in this case."

X. In holding that said order of June 13, 1923, as affirmed by said later order, "is confiscatory in violation of the fifth amendment of the Constitution in depriving the railroads of the use of their mines and the private car owners of the use of their mines and cars."

XI. In holding that said order of June 13, 1923, as affirmed by said later order, is "beyond the authority of the commission, without warrant of law, and null and void."

XII. In holding that the "valuable legal right in the ownership of private cars * * * furnishes the only means by which the car owners can procure an adequate fuel supply in periods of recurrent car shortage."

XIII. In holding that the compensation to the owners for the use by railroads of private cars has been fixed by the commission at one and one-half cents per mile.

108 XIV. In holding to be untenable the commission's finding that an increased pro rata allotment at unassigned-car mines will result if the assigned-car rule is abolished.

XV. In holding that "the right to the use of private cars is clearly recognized by the law" in the sense and manner stated by the court.

XVI. In holding that "the right to the u e of private cars" is not subordinate to the power of Congress and of the commission to regulate interstate commerce.

XVII. In failing to discriminate between the legal title of plaintiffs in and to the cars and the use of the cars in interst commerce over which the commission has full control.

XVIII. In holding that the railroads can not reasonably sec an adequate supply of fuel under the order of the commission, a that, therefore, the present method of obtaining railroad fuel by use of assigned cars is justified, although the general public is th served at the expense of other shippers and consumers of coal.

XIX. In holding that the commission in prescribing reasonal and nonpreferential rules of car distribution can not treat upon t same basis as the other coal cars which the carrier owns or uses c owned by private shippers and used by the carriers.

XX. In ignoring the primary duty of the carriers under the int state commerce act at all times to furnish transportation, includi an adequate supply of cars.

XXI. In not overruling the claim of coal shippers to the right times of car shortage to the exclusive and preferential use of c cars owned by them in possession of, operated, and otherwise treat by the several carriers as a part of their general operation and equi ment.

XXII. In holding that rentals paid by carriers to the owners private coal cars must be considered in determining rules by hi carriers are to be governed in distributing coal cars.

109 XXIII. In failing to give full force and effect to par graphs (11), (12), (13), (14), and (15) of section 1 of th interstate Commerce act.

XXIV. In holding that the commission "has misconceived th purpose of paragraph (15) of section 1" of the interstate commer act.

XXV. (Error assigned by the United States only.) In failing t give full force and effect to paragraph (12) of section 1 of the inte state commerce act, and in holding "We find it, however, unnece sary to base our conclusions in the case upon the construction paragraph (12) of section 1, although its legislative history in co nection with the administrative history of the assigned-car rule ha a bearing upon the question of the reasonableness of the order the commission which is before us."

Wherefore defendants, and each of them, pray that the final orde or decree of the District Court, entered December fifteenth, 192 be reversed, annulled, and set aside with directions that the perma nent injunction shall be dissolved and the bill of complaint dismisse and for such other and further order as may be appropriate.

GEORGE W. COLE,
United States Attorney, Eastern District of Pennsylvania.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
R. GRANVILLE CURRY.
Solicitor for Interstate Commerce Commission.

110 In United States District Court

[Title omitted.]

Order allowing appeal of United States and Interstate Commerce Commission

Filed Feb. 8, 1926

In the above-entitled cause, United States of America, defendant, and Interstate Commerce Commission, intervening defendant, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, made and entered December fifteenth, 1925, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the said order or decree was made and entered to the Supreme Court of the United States.

VICTOR B. WOOLLEY,
United States Circuit Judge.
J. W. THOMPSON,
W. H. S. THOMSON,
United States District Judges.

111 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed Feb. 16, 1926

To the CLERK:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the United States of America and Interstate Commerce Commission and include therein, in the order given below the following matter, viz:

1. Bill of complaint and exhibits.
2. Answer of the United States.
3. Intervention and answer of Interstate Commerce Commission.
4. Intervening petition of the Central Pennsylvania Coal Producers' Association.
5. Intervening petition of Pocahontas Operators' Association et al. and answer.

6. Transcript of the record of the evidence and proceedings fore the court, including the testimony of the witnesses offered counsel for the plaintiffs (or in lieu thereof any narrative agr upon by the parties and/or approved by the court).
7. Order of final submission.
8. Opinion of the District Court.
9. Final decree.
10. All journal entries in their appropriate order.
11. Petition for appeal.
12. Assignment of errors.
112 13. Order allowing appeal.
14. Præcipe for record.
15. Summons and severance (two).
16. Notice to the Attorney General of Pennsylvania.
17. Citation.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
R. GRANVILLE CURRY,
Solicitor for Interstate Commerce Commission.

Service of the foregoing præcipe for record and the receipt of copy thereof are hereby admitted and acknowledge this 10th day o February, 1926.

F. A. RIVINUS,
Solicitor for Appellees.

113 In United States District Court

[Title omitted.]

Summons and severance

To the Central Pennsylvania Coal Producers' Association, a voluntary unincorporated association:

You are hereby invited to join with the United States of America and the Interstate Commerce Commission in an appeal to the Supreme Court of the United States this day prosecuted from the final order or decree of the District Court entered December 15, 1925, in the above-entitled cause in which you are intervenor.

In the event of your failure to join the United States of America and Interstate Commerce Commission will prosecute the appeal for the reversal of the final order or decree of the District Court without joining you.

This notice is seasonably given that you may have full opportunity to determine your own course with respect to an appeal.

February 8th, 1926.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

R. GRANVILLE CURRY,
Solicitor for the Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 11th day of February, 1926.

A. M. LIVERIGHT,
Solicitor for the Central Pennsylvania Coal Producers' Association.

114 In United States District Court

[Title omitted.]

Summons and severance

Filed Feb. 10, 1926

To Pocahontas Operators' Association, an unincorporated voluntary association, Empire Coal & Coke Company, a corporation, and Pocahontas Fuel Company Incorporated, a corporation:

You are hereby invited to join with the United States of America and the Interstate Commerce Commission in an appeal to the Supreme Court of the United States this day prosecuted from the final order or decree of the District Court entered December 15, 1925, in the above-entitled cause in which you are intervenors.

In the event of your failure to join the United States of America and Interstate Commerce Commission will prosecute the appeal for the reversal of the final order or decree of the District Court without joining you.

This notice is seasonably given that you may have full opportunity to determine your own course with respect to an appeal.

February 8th, 1926.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

____ ____,
Solicitor for the Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 8th day of February, 1926.

E. L. GREEVER,
Solicitor for the foregoing intervenors.

115 In United States District Court

[Title omitted.]

Notice of appeal

To the honorable GEORGE W. WOODRUFF,
Attorney General of the State of Pennsylvania:

You are hereby notified that the defendants United States of America and Interstate Commerce Commission have taken an appeal

from the final order or decree of the District Court, entered December 15, 1925, to the Supreme Court of the United States, and that the order allowing the appeal makes the same returnable within thirty (30) days from the date thereof.

This notice is given to you pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221).

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

R. GRANVILLE CURRY,
Solicitor for the Commission.

Service of a copy of the within notice is hereby admitted and acknowledged this 8th day of February, 1926.

GEORGE W. WOODRUFF,
Attorney General of the State of Pennsylvania.

116 [Citation in usual form showing service on F. M. Rivinus, filed Feb. 25, 1926, omitted in printing.]

117 [Clerk's certificate to foregoing transcript omitted in printing.]

118 In the United States District Court

[Title omitted.]

Petition for appeal by the intervenors, Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations)

Filed Feb. 8, 1926

Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations), intervenors, feeling themselves aggrieved by the final order or decree of the District Court made and entered December 15, 1925, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

They rely upon the transcript of record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, which is to be transmitted to the Supreme Court of the United States upon the appeal herein of the United States and the Interstate Commerce Commission.

E. L. GREEVER,
Of counsel for Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company and Pocahontas Fuel Company, Inc., (corporations).

GREEVER & GILLESPIE,
Counsel, Tazewell, Va.

119 In the United States District Court

[Title omitted.]

Order allowing appeal of Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations), intervenors

Filed Feb. 9, 1926

In the above-entitled cause the intervenors, Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations), having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court of the United States, made and entered December 15, 1925, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided;

It is ordered and decreed that the appeal be, and the same is hereby allowed as prayed and made returnable within thirty (30) days from the date hereof, said intervenors relying upon the transcript of the record, proceedings, and papers on which said order was made and entered, to be transmitted to the Supreme Court of the United States with the appeal of the United States and the Interstate Commerce Commission herein.

VICTOR B. WOOLLEY,
United States Circuit Judge.
J. W. THOMPSON,
W. H. S. THOMSON,
United States District Judges.

120 In United States District Court

[Title omitted.]

Assignments of error of the intervenors, Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations). Filed Feb. 8, 1926

The intervenors, Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorported (rorporations), now come, by their counsel, and in connection with their petition for appeal, file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered December 15, 1925.

The District Court erred:

1. In suspending, annulling, and enjoining the commission's order of June 13, 1923, as affirmed by its further order of December 23, 1924.

2. In not dismissing the bill for injunction for want of equity.

3. In substituting its judgment for the judgment of the commission concerning a regulation pertaining to the distribution of cars for the transportation of coal in interstate commerce.

4. In holding that said order of June 13, 1923, as affirmed
121 by said order of December 23, 1924, "is unjust and unreasonable and an unlawfully arbitrary exercise of power."

5. In holding that said order of June 13, 1923, as affirmed by said later order, "undertakes by indirection to regulate the soft-coal industry in matters which do not constitute transportation service relating to commerce and are not within the regulatory power of the commission."

6. In holding that said order of June 13, 1923, as affirmed by said later order, "assumes without authority of law to restrict the lawful right of the railroads to obtain by purchase or ownership of mines the supplies necessary to their operation in the service of the public."

7. In holding that "the use of the railway fuel cars and private cars under the assigned car rule is not per se preferential."

8. In holding that "there are no sufficient facts set out in the commission's report upon which to base findings of such discriminatory and preferential practices as to justify an order of universal application such as has been entered in this case."

9. In holding that said order of June 13, 1923, as affirmed by said later order, "is confiscatory in violation of the fifth admendment of the Constitution in depriving the railroads of the use of their mines and the private car owners of the use of their mines and cars."

10. In holding that said order of June 13, 1923, as affirmed by said later order, is "beyond the authority of the commission, without warrant of law, and null and void."

11. In giving to the effect of the commission's order upon the plaintiffs, as found by the court, conclusive weight as against the effect thereof upon other shippers and upon the public, as found by the commission.

12. In holding that the advantage to the plaintiffs that they "may successfully maintain production," that the fact that they
122 "have laid out large sums of money in supplying themselves with private cars," and that depriving them "of the use of such cars in time of coal shortage" constitute a justification of the undue prejudice to other shippers which the commission finds results from these facts.

13. In holding that "the right to the use of private cars is clearly recognized by the law" in the sense and manner stated by the court.

14. In holding that "the right to the use of private cars" is not subordinate to the powers of Congress and of the commission to regulate interstate commerce.

15. In construing paragraph (3), paragraph (12), paragraph (14), and paragraph (15) of section 1 and paragraph (13) of section 15.

16. In holding that "in paragraph (15) their (private cars) use is excluded from the power conferred by Congress upon the commission to make direction with respect to car service."

17. In holding that the "valuable legal right in the ownership of private cars, in which sums of money amounting to millions of dollars have been invested by the plaintiffs, furnishes the only means by which the car owners can procure an adequate fuel supply in periods of recurrent car shortage," and in holding that fact, even if it be a fact, material, if, as found by the commission, it results in an unduly preferential service by the railroads to the plaintiffs.

18. In failing to discriminate between the legal title of the plaintiffs in and to the cars, with which the commission has nothing to do, and the use of said cars in interstate commerce, over which the commission has full control.

19. In failing to give full force and effect to paragraphs (11), (12), (13), (14), and (15) of section 1 of the act.

20. In holding that the railroads cannot reasonably secure an adequate supply of fuel under the order of the commission and that the present method of obtaining railroad fuel by the use of assigned cars is justified, although the general public is thus served at the expense of other shippers and consumers of coal.

123 21. In failing to recognize the fact that "the right to the use of private cars," as found by the court, amounts to the setting apart for their exclusive use of a definite portion of the railroad's facilities, including tracks, terminals, motive power, and labor.

22. In holding that the references by the commission to the increased cost of production and losses to the producer of coal resulting from the use of assigned and private cars by the plaintiffs are anything more than statements of fact showing the injuries sustained by reason of the discrimination found by the commission to be caused by the existing assigned car rules, showing that the discrimination found is illegal because it works injury and undue preference.

23. In holding that the order of the commission is void because, as the court construes it, privately owned cars might remain idle while otherwise plaintiffs could use them.

24. In ignoring the primary duty of the railroads to furnish an adequate car supply and in imposing upon shippers other than owners of private cars the entire burden of their failure to do so.

25. In holding "that the owners of private cars enjoy the use of a disproportionately large part of the facilities of the carriers is not discriminatory unless other shippers are thereby deprived of the use of those facilities and that is not the case unless there is a shortage of such facilities," for car shortages are shown to be

caused always by such shortage of facilities somewhere, and the whole transportation facilities of the country must be taken into account and not simply those on the originating line in question.

26. In holding that the railroads have the right to assign railroad fuel cars beyond the pro rata allotment to which the mines to which they are assigned are entitled, thereby taking the property and property rights of other mines (by depriving them of their pro rata share of cars) without compensation.

124 27. In holding that the payment of compensation to the owners for the use by railroads of private cars does not place such cars in the same class as system cars, all devoted and subject to the service of the public.

28. In holding to be untenable the commission's finding that an increased pro rata allotment at unassigned car mines will result if the assigned car rule is abolished.

Wherefore the intervenors, and each of them, pray that the final order or decree of the District Court entered December 15, 1925, be reversed, annulled, and set aside, with directions that the permanent injunction thereby awarded shall be dissolved and the bill for injunction dismissed, and for such other and further order as may be appropriate.

GREEVER & GILLESPIE,

Attorneys for Intervenors, Pocahontas Operators' Association an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated, Corporations.

E. L. GREEVER,
Of Counsel.

125 [Citation in usual form showing service of F. M. Rivinus et al., filed Feb. 25, 1926, omitted in printing.]

126-127 [Clerk's certificates to foregoing transcript omitted in printing.]

128 In United States District Court

[Title omitted.]

Stipulation re appeal papers of intervenors

It is hereby agreed and stipulated that the foregoing certified copies of (a) petition for appeal of the intervenors, Pocahontas Operators' Association (an unincorporated, voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (corporations), (b) order filed February 9, 1926, (c) assignement of errors by an on behalf of said intervenors, (d) citation with acceptance of service by solictor for appellees, and (e)

citation with acceptance of service by solicitors for the Central Pennsylvania Coal Producers Associations, Intervenor, all of which are parts of the original record in the above-styled case in the District Court of the United States for the Eastern District of Pennsylvania, may be added to and made a part of the record in the
129 appeal of said case by the United States and the Interstate Commerce Commission now pending in the Supreme Court of the United States, Docket No. 606.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General for the United States.
R. GRANVILLE CURRY,
Solicitor for the Interstate Commerce Commission.
F. M. RIVINUS,
Solicitor for the Appellees.
E. L. GREEVER,
Solicitor for Pocahontas Operators Association, Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated.

SEPTEMBER 11TH, 1926.

130 In Supreme Court of the United States

October term, 1926

Statements of points to be relied upon and designation by appellants of parts of the record to be printed

(Filed Sept. 14, 1926)

Statement of points of the I. C. C.

To the CLERK OF THE SUPREME COURT:

The appellant, Interstate Commerce Commission, hereby states the points upon which it intends to rely in the above-entitled suit as follows:

1. The court erred in receiving and considering oral testimony offered in open court by plaintiffs over objection by counsel for the United States and Interstate Commerce Commission.

2. The court erred in substituting its judgment for the judgment of the commission as to a rule of car distribution prescribed by the commission in the exercise of its lawful discretion.

3. The court erroneously held that the commission had arbitrarily exercised its authority to require rules of car distribution, had undertaken to regulate the soft-coal industry in matters which do not constitute transportation service, and exceeded its powers under the law.

131 4. The court erroneously held that the commission by its order assumes without authority to restrict the rights of rail-

roads to obtain their supplies and to deprive railroads of the use of their mines and private car owners of the use of their mines and cars in violation of the Constitution.

5. The court erred in holding that the facts set out in the commission's report are not sufficient to justify the commission's order.

6. The court erred in holding that the railroads cannot reasonably secure an adequate supply of fuel under the order of the commission and that therefore the present method of obtaining railroad fuel by the use of assigned cars in justified, although the general public is thus served at the expense of other shippers and consumers of coal.

7. The court erred in holding that the "valuable legal right in the ownership of private cars * * * furnishes the only means by which the car owners can procure an adequate fuel supply in periods of recurrent car shortage."

8. The court erred in holding that the commission in prescribing reasonable and nonpreferential rules of car distribution cannot treat upon the same basis as the other coal cars which the carrier owns or uses cars owned by private shippers, in the possession of, operated, and otherwise treated by the several carriers as a part of their general operation and equipment.

9. The court erred in construing the provisions of section 1 of the interstate commerce act relating to car distribution as recognizing in railroads and private car owners rights which they do not have.

10. The court erred in holding to be untenable the commission's finding that an increased pro rata allotment at unassigned
132 car mines will result if the assigned car rule is abolished.

11. The court erred in holding that the compensation to the owners for the use by railroads of private cars has been fixed by the commission at one and one-half cents per mile.

12. The court erred in annulling and enjoining the commission's order of June 13, 1923, as approved by its order of December 23, 1924.

R. GRANVILLE CURRY,
For Interstate Commerce Commission, Appellant.

Dated September 14, 1926.

133 *Designation of the parts of the record which shall be printed by the clerk*

To WILLIAM R. STANSBURY, Esq.,
Clerk, Supreme Court of the United States:

By their respective counsel the appellants and each of them hereby designate for printing the entire record which they think necessary for consideration for the determination of the foregoing appeal and the points on which they intend to rely, except so much and such parts thereof as are designated below which shall not be printed.

1. Exhibit A to bill of complaint, report, and order of Interstate Commerce Commission of June 13, 1923, 80 I. C. C. 520 (ten printed copies are transmitted herewith for use on the hearing).
2. Exhibit B to bill of complaint, report, and order of Interstate Commerce Commission of December 23, 1924, 93 I. C. C. 701 (ten printed copies are transmitted herewith for use on the hearing).
3. Petition of Central Pennsylvania Coal Producers Association for leave to intervene and answer.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
R. GRANVILLE CURRY,
Solicitor for Interstate Commerce Commission.

SEPTEMBER 14, 1926.

134 *Statement of points of the United States*

United States of America will rely on the following points raised by the assignments of error in brief and in oral argument on the hearing of the appeal for the reversal of the decree of the District Court.

I. The District Court failed to give full force and effect to paragraph (12) of section 1 of the interstate commerce act, and erred in holding "We find it, however, unnecessary to base our conclusions in the case upon the construction of paragraph (12) of section 1, although its legislative history in connection with the administrative history of the assigned car rule has a bearing upon the question of the reasonableness of the order of the commission which is before us" (XXV).

II. The District Court failed to give full force and effect to paragraphs (11), (12), (13), (14), and (15) of section 1 of the interstate commerce act and erred in holding that the commission "has misconceived the purpose of paragraph (15) of section 1" (XXIII, XXIV).

III. The holding of the District Court that the railroads cannot reasonably secure an adequate supply of fuel under the order of the commission; that, therefore, the present method of obtaining railroad fuel by the use of assigned cars is justified although the general public is thus served at the expense of other shippers and consumers of coal, and "the right to the use of private cars" is not subordinate to the power of Congress and of the commission to regulate interstate commerce constitutes reversible error (XVI, XVIII).

135

IV. The holding of the District Court that "the right to the use of private cars is clearly recognized by the law," in the sense and manner stated in the opinion, and the commission in prescribing reasonable and nonpreferential rules of car distribution cannot treat upon the same basis as the other coal cars which the carrier owns or uses cars owned by private shippers and used by the carriers, constitutes reversible error (XV, XIX).

V. The District Court ignored the primary duty of the carriers under the interstate commerce act at all times to furnish transportation including an adequate supply of cars, and erroneously sustained the claim of coal shippers to the right, in times of car shortage, to the exclusive and preferential use of coal cars owned by them in possession of, operated, and otherwise treated by the several carriers as a part of their general operation and equipment (XX, XXI).

VI. The District Court failed to discriminate between the legal title of the owners in and to the cars and the use of the cars in interstate commerce over which the commission has full control, and erroneously held that "valuable legal right in the ownership of private cars * * * furnishes the only means by which the car owners can procure an adequate fuel supply in periods of recurrent car shortage"; that the compensation to the owners for the use by railroads of private cars has been fixed by the commission at one and one-half cents per mile; and that the rentals paid by carriers to the owners of private coal cars must be considered in determining rules by which carriers are to be governed in distributing coal cars (XII, XIII, XVII, XXII).

VII. The action of the District Court in holding that the order of the commission "undertakes by indirection to regulate the soft-coal industry in matters which do not constitute transportation service relating to commerce and are not within the regulatory
136 power of the commission" and as untenable the commission's finding that an increased pro rata allotment at unassigned car mines will result if the assigned car rule is abolished constitutes reversible error (VI, XIV).

VIII. The holding of the District Court "that there are no sufficient facts set out in the commission's report upon which to base findings of such discriminatory and preferential practices as to justify an order of universal application such as has been entered in this case" and "that the use of the railway fuel cars and private cars under the assigned car rule is not per se preferential" constitutes reversible error (VIII, IX).

IX. The holding of the District Court that the order of the commission "is confiscatory in violation of the fifth amendment of the Constitute in depriving the railroads of the use of their mines and the private car owners of the use of their mines and cars" and "is beyond the authority of the commission, without warrant of law, and null and void" constitutes reversible error (X, XI).

X. The holding of the District Court that the order "is unjust and unreasonable and an unlawfully arbitrary exercise of power" and "assumes without authority of law to restrict the lawful right of the railroads to obtain by purchase or ownership of mines the supplies necessary to their operation in the service of the public" constitutes reversible error (V, VII).

XI. The District Court should not have received and considered the oral testimony offered in open court over objections. Having overruled the objections and received the testimony, the District Court should have held the evidence offered by the carriers in all respects sustained and did not in any wise tend to impair or overthrow the order of the commission.

XII. The District Court clearly substituted its judgment for the judgment of the commission concerning a regulation pertaining to the distribution of cars for the transportation of coal in
137 interstate commerce.

The District Court should have denied the injunction and dismissed the bill of complaint for want of equity.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

SEPTEMBER 14, 1926.
[File indorsement omitted.]

138 In Supreme Court of the United States

Statement of points to be relied upon

Filed Sept. 14, 1926

Counsel for complainants hereby designate their assignments of error as the points upon which they will rely in this appeal.

E. L. GRUVER.
Of Counsel for Pocahontas Operators' Association (an unincorporated voluntary association), Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated (Corporations), Appellants.

[File indorsement omitted.]

139 In United States District Court

[Title omitted.]

Order enlarging time within which to docket case and file the record thereof

Filed Mar. 4, 1926

It appearing that the record is voluminous, and that additional time is required to assemble, prepare, and certify the transcript thereof on appeal, and for other good cause shown,

It is ordered that the time within which the United States of America and the Interstate Commerce Commission (defendants in the District Court and appellants in the Supreme Court of the

United States) shall docket the case and file the record thereof with the clerk of the Supreme Court be, and it is hereby, enlarged to and including Monday, May tenth, 1926.

VICTOR B. WOOLLEY,
Circuit Judge.
J. WHITAKER THOMPSON,
W. H. S. THOMSON,
District Judges.

[Similar orders extending time to and including Sept. 1, 1926, omitted in printing.]

[File indorsement omitted.]

[Indorsement on cover:] File Nos. 32,173, 32,205. E. Pennsylvania, D. C. U. S. Term No. 606. United States of America and Interstate Commerce Commission, appellants, vs. the Akron, Canton & Youngstown Railway, Atlanta & West Point Railroad Company, Atlanta, Birmingham & Atlantic Railway Company, et al. Filed August 31, 1926. Term No. 638. Pocahontas Operators' Association, Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated, appellants, vs. the Akron, Canton & Youngstown Railway, Atlanta & West Point Railroad Company, Atlanta, Birmingham & Atlantic Railway Company, et al. Filed September 14th, 1926. File Nos. 32,173, 32,205.

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1 IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

In equity, No. 3285

AKRON, CANTON & YOUNGSTOWN RAILWAY ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, DEFENDANTS

Answer of Pocahontas Operators' Association, Empire Coal & Coke Company, a corporation, and the Pocahontas Fuel Company, Incorporated, a corporation

These defendants, the Pocahontas Operators' Association, Empire Coal & Coke Company, and Pocahontas Fuel Company, Incorporated, having been made parties defendant herein by order of court, for answer to the bill of complaint filed herein, say:

I

That the defendant Pocahontas Operators' Association is an unincorporated voluntary association, the membership of which is made up of numerous corporations, some of them chartered,
2 organized, and doing business under the laws of the State of West Virginia, and some of them chartered, organized, and doing business under the laws of other States, and all of which are engaged in the business of mining and shipping coal in the States of West Virginia or Virginia, said association being organized for the purpose of doing the work ordinarily done by trade associations in connection with preserving and promoting the general interests of its members.

That the defendant Empire Coal & Coke Company is a West Virginia corporation engaged in the business of mining and shipping coal in the State of West Virginia.

That the defendant Pocahontas Fuel Company, Incorporated, is a Virginia corporation engaged in the business of mining and shipping coal in the States of West Virginia and Virginia.

That all of the members of the said Pocahontas Operators' Association, and also the said Empire Coal & Coke Company and the Pocahontas Fuel Company, Incorporated, are served by the complainant, Norfolk & Western Railway Company, both in the State of West Virginia and in the State of Virginia.

That the principal offices of these defendants are as follows:
Pocahontas Fuel Company, Incorporated, Boissevain, Va.
Empire Coal & Coke Company, Landgraff, W. Va.
Pocahontas Fuel Company, Incorporated, Boisssevain, Va.

That defendants file this answer in their own behalf and also on behalf of all of the other members of said Pocahontas Operators' Association. The questions involved in this case are of common and general interest to all of said members of said association
3 Said members constitute a class so numerous as to make it impracticable to bring them all before the court, and these defendants file this answer on behalf of the whole.

That defendants, and those on whose behalf this answer is filed, have an interest in the matters in controversy in this cause by reason of the fact of the mining and shipping of coal by them on the line of the Norfolk & Western Railway Company as aforesaid, in which business the method and manner of distribution of coal cars to their mines by said railway company is of great importance, and in particular because their lawful car supply is directly and unlawfully limited and restricted by the number of coal cars assigned by said railway company to the mines furnishing it with fuel, and said lawful car supply will likewise be directly and unlawfully limited and restricted by the assignment of privately owned cars by said railway company, in the way and manner, in each instance, alleged in the bill to be within the right and authority of the said railway company to assign them, to the great injury and damage of these defendants.

That Pocahontas Operators' Association, on behalf of all of its members, including said other two defendants herein, appeared before the Interstate Commerce Commission, by counsel, in the proceeding begun by the commission on its own motion, entitled "Assigned cars for bituminous-coal mines, Docket No. 12530, in re distribution among coal mines of privately owned cars and cars for railroad fuel," mentioned and referred to in the bill, and cross-examined witnesses, introduced evidence, filed their brief, and presented oral argument before the commission against the con-
4 tents of the carriers, plaintiffs in this suit, that they had the right to distribute their own cars for their own fuel purposes and privately owned cars, in the way and manner claimed to be their right in the bill of complaint.

II

That on information and belief these defendants admit the facts alleged in Paragraphs I, II, III, and IV of the bill of complaint.

III

That the defendants have no knowledge of the matters and things alleged in Paragraphs V, VI, and VII of the bill of complaint, and

neither admit nor deny the same, but they deny that the said allegations in said Paragraphs V, VI, and VII are material to the issue in this cause; but if they, or any of them, should be held by the court to be material, these defendants demand strict proof thereof.

IV

That it is true, as alleged in Paragraph VIII of the bill of complaint, that the "plaintiffs are required both by obligations devolving upon them under their service charter, and by express enactment of the interstate commerce act, to provide and furnish transportation upon reasonable request therefor, and in order that they may be enabled to comply with this obligation it is essential that they should be able to procure and to have available at all times coal for supplying their engines," and it may be true, as alleged, that it is necessary for the plaintiffs to have and use coal cars for the purpose of moving their fuel coal to coaling stations, but defendants deny that it is true, as alleged in the bill, that "cars so used are not available for common carriage."

Defendants also deny that it is true, as alleged in said Paragraph VIII of the bill, that the plaintiffs' "duty to furnish transportation generally to all shippers is not subordinate to, but, on the contrary, is superior to any obligations devolving upon them in respect to the allotment of their equipment among shippers of any one or more commodities, and that any act done by them necessary to enable them to furnish such transportation can not lawfully be regarded and treated as one resulting in undue preference or undue discrimination under section 3 of the interstate commerce act," but, on the contrary, defendants say that the duty of plaintiffs to furnish transportation generally to all shippers is such, as hereinafter set forth, that they may not do so at the expense of any one or more shippers, but in so doing they must render to each and every shipper equal service, and the alleged duty to all shippers can only be performed by rendering equal service to each and every shipper.

Defendants deny all other allegations of fact contained in said Paragraph VIII of the bill, and all the deductions and inferences made therefrom in said Paragraph VIII, and aver that the true intent and meaning of the order of the commission referred to in said paragraph is that the plaintiffs herein and all other common carriers by railroad are bound by the car-distribution rules approved and prescribed by the commission, and must make equal distribution of coal cars pro rata to all coal mines requesting same, and that the commission alone, in cases of emergency only, under the statutes, has the authority to suspend said rules and by special order give to common carriers permission to assign to any particular mine or mines for railroad-fuel purposes more than the pro rata share of cars to which said mine or mines may be entitled under the prescribed rules.

6 V

That defendants deny that it is true, as alleged in Paragraph IX of the bill of complaint, that "for many years, and with full sanction of law, shippers of freight owning private cars have tendered such cars for movement over the lines of plaintiffs, which plaintiffs have moved from points of origin to points of destination for the account of such shippers," but aver that however this may be as to the practice of plaintiffs in the past, they have no such right under the law, and such cars can not be used at all except under the circumstances and conditions herein set forth.

Defendants further deny that it is true, as alleged in said Paragraph IX of the bill, that "when cars are not currently available to meet all demands, the effect of this (orders of the commission) will be to require plaintiffs to retain on sidetracks empty cars which would otherwise be used for the shipment of coal, and from the transportation of which they would derive substantial earnings," but aver the fact to be that it is immaterial whether or not they, or any part thereof, are "retained on the sidetracks empty," as alleged, for the reason that the use of any of such cars in excess of the pro rata share of cars allotted to the mine or mines furnishing railroad fuel would result in undue preference and discrimination in favor of those mines and undue prejudice and damage to other mines, and the commission has rightfully so held.

Defendants also deny that it is true, as alleged in said Paragraph IX of the bill, that "plaintiffs have the right to receive and transport private coal cars, whether legally required to do so or not," except in such way as not to operate as an undue preference and discrimination in favor of mines to which such cars are sent for loading

7 railroad fuel and in such manner as not to operate as undue prejudice and damage to other mines.

VI

As to the allegations in Paragraph X of the bill of complaint, the defendants deny specifically that anything in the legislative history of paragraph 12, section 1, of the interstate commerce act, shows that Congress intended thereby to do anything to restrict the power of the commission so as to deprive it of the authority or jurisdiction to enter the orders herein under attack, and moreover, there is nothing in the language of said paragraph 12 of section 1 of the interstate commerce act to indicate any such intent, but on the contrary, said paragraph specifically makes it the duty of each carrier "to make just and reasonable distribution of cars for the transportation of coal among the mines served by it * * * and to maintain and apply just and reasonable ratings of such mines, and to count each and every car furnished to or used by any such mine for transportation of coal against the mine"; and it is the duty of the commission

to enforce this requirement of the statute, and said orders of the commission, attacked in the bill of complaint herein, were entered in accordance with that requirement; and defendants also deny that "the assigned-car rule" "has been tested by litigation and upheld" in any manner inconsistent with the reports and orders of the commission set out in the bill of complaint and sought to be enjoined.

VII

That defendants deny each and every allegation of fact and each and every conclusion drawn therefrom contained in Paragraph XI of the bill.

8

VIII

That defendants deny each and every allegation contained in Paragraph XII of the bill of complaint, and in this connection adopt as part of this answer, as fully as if herein set out in extenso, all of Paragraph II of the answer of the Interstate Commerce Commission to the bill of complaint herein.

IX

That defendants deny that the plaintiffs are entitled to the relief prayed for in the bill of complaint or to any part thereof.

X

Further answering the bill of complaint, these defendants say that they are advised and so aver that the Interstate Commerce Commission, in the due and lawful exercise of its discretion and within the scope of its authority as determined by the statute, would have been justified in going further than it did in the reports and orders here under investigation, and would have been warranted in prescribing rules and regulations for car distribution to the effect that all coal cars in the possession of the plaintiffs for use become, by reason of said possession, system cars, and should be treated in all respects as system cars, without distinction between classes thereof, whether privately owned cars or railroad cars distributed for railroad-fuel purposes. The statute prescribes that railroad companies shall furnish coal cars to all shippers alike, without discrimination and without prejudice, and this statutory provision is in consonance with and logically results from the constitutional provision that private property and property rights shall not be taken for private uses and shall not be taken for public uses without compensation.

9

Therefore these defendants say that the plaintiffs and other railroad companies are public-service corporations, charged with the public duty of furnishing adequate transportation facilities, which must be done at their own expense, and for which they are compen-

sated by rates fixed or approved by the Interstate Commerce Com mission. It is to prevent their failure to perform this statutory dut that they assert the right in the bill of complaint to assign cars fo their own fuel purposes, to the extent and in the way and manne therein set out, and base that assertion of right upon the allegatio that it is necessary in order to enable them to perform this duty t the public. Defendants aver that this assertion of right is contrar to law, for the reason that such an assignment of cars operates a undue prejudice and discrimination in favor of the mines to whic said cars are so assigned, and inflicts upon the owner of other mine a direct money loss for which there is no compensation to the owners and this constitutes a taking of their property and property right without compensation. It is not within the power of the Govern ment itself to take private property or property rights for publi service without compensation, and it necessarily follows that n such power can exist in railroad companies.

When a railroad company, in times of car shortage, arbitrarily takes from the total coal-car supply a sufficient number of cars t supply its fuel needs, that number being in excess of the pro rat share of the total car supply to which the mine or mines to whic they are sent are entitled, it does so by reducing the pro rata shar of cars to which other mines are entitled. This discriminatory and prejudicial taking away from the other mines of a part of thei pro rata shares of cars inflicts direct injury and loss upo them, in the following, among other, particulars: (a) The production of the mines is reduced, thereby increasing the cost o production; (b) the production being decreased, there is a loss o business and a consequent loss of profit, and of good will resulting from the enforced inability, on accounty of lack of cars, to fulfill contracts; (c) the labor conditions of these other mines are directly and injuriously affected by the better and fuller employment of labor at the so-called fuel mines, resulting in taking away from the said other mines the more efficient laborers and creating discontent among those remaining; and (d) the assignment of cars for railroad fuel, giving to the mines furnishing it full running time, is used by the railroad companies to beat down the prices of coal which they would otherwise pay, or at least, has that effect, and such purchases of so large a percentage of the total output of coal (28 to 33 per cent) at reduced prices depresses the whole market and causes a loss to all other operators. For these losses so imposed and incurred the mines suffering the same receive no compensation and can obtain none.

In answer to the contentions of plaintiffs that if they can not so assign cars for their fuel purposes the public will suffer these defendants say: (1) That this allegation is untrue in fact, and that there is, always has been, and always will be an ample supply of suitable coal, easily obtainable on the open market by the plaintiffs, to supply all their fuel needs, and they can always purchase it as other users of coal purchase their coal, and the fact, if it be a fact, that fuel so purchased would cost the plaintiffs more than if procured

by giving preferential use of cars to mines furnishing them fuel does not justify such preferential use of cars, which is erroneously alleged to be necessary; (2) that if it be admitted that if plaintiffs
11 are not permitted to assign cars for fuel purposes, as claimed by the plaintiffs, the public would suffer, then it is upon the whole public, and not upon individuals or individual companies, parts of that public, that the said suffering or loss should fall; that is to say, the plaintiffs and other railroad companies should not be permitted to enable themselves to perform their statutory duties by infringement upon private rights and by taking private property, and any loss of suffering resulting from their failure to perform their statutory duties ought to fall upon the public as a whole in the form of reduced service. If that failure is due to the negligence of the carriers themselves, they have no right to make private individuals or companies suffer or pay therefor in the form of losses resulting therefrom. If that failure is due to unusual conditions and not to the carriers' failure to furnish cars sufficient for normal demands, as is generally the case, they owe no further duty to the public and can not take private property or property rights to enable them to render a service they are under no legal obligation to render. So, in any event, the public as a whole must accept the result of a car shortage or a failure of transportation in any form, in reduced service, instead of such loss being imposed upon individuals for the benefit of the public and without compensation to such individuals.

XI

Defendants further say that use of privately owned cars, in the manner alleged in the bill of complaint to be lawful, would result, as found and held by the commission, in undue preference and discrimination in favor of the mines to which they would be assigned and in undue prejudice and damage to all other mines, which
12 would result in the driving out of the business of mining and shipping coal of all mine owners not able or not willing to invest in cars for their own use. This preferential use of such cars is condemned by the commission in the reports and orders complained of after considering full and complete evidence on the subject, and defendants are advised and aver that said reports and orders are plainly right and within the statutory powers of the commission.

The defendants further say that the use of privately owned cars, alleged in the bill of complaint to be lawful, results in the taking of private property and property rights for the benefit of private interests, which finds no justification under the law under any conditions.

The commission might lawfuly have held, in the exercise of its discretion and within its statutory powers, that the moment the private owner of a car parts with its possession for hire to the railroad company it becomes a part of the equipment of the rail-

road company and must be devoted, under the law, to the public service. Privately owned cars, in the use of the railroad companies, are governed by all the laws regulating interstate commerce and are under the authority and control of the Interstate Commerce Commission.

This principle has long been recognized by the Interstate Commerce Commission to the extent of exercising control over the operations of privately owned cars, and to the extent of requiring that they be counted as part of the total supply of cars, and the statute gives the commission the power to fix the compensation to be paid by the carriers for their use.

In the orders of the commission under investigation in this case the commission has declared that the mines served by the
13 privately owned cars shall not receive from time to time more cars than their pro rata shares when compared with other mines, holding that any other practice is unduly discriminatory and prefential, and defendants are advised and aver that the commission might, in the exercise of its statutory discretion, have further held that in fact all coal cars for the use of which the railroad company pays must be counted, treated, and used in all respects as system cars.

Defendants further aver the facts to be in this case, as shown by the evidence introduced before the commission by the owners of said private cars, and not denied in the bill of complaint, that the railroad companies do not pay for the use of the privately owned cars in evidence before the commission an adequate compensation, but that they pay amounts barely sufficient to keep up repairs on the cars. These amounts do not provide for depreciation or for return on invested capital, and therefore the owners of said private cars in fact pay a bonus to the railroad companies, plaintiffs herein, in the form of furnishing invested capital free of charge, for which they receive in return the privilege of using the railroad companies' motive power, road and terminal facilities, and administrative services to a greater extent than can be used by others. While they nominally pay the same freight rates on their coal as are paid by others, they in fact pay a higher rate, for which they receive a different and better service, and therefore the owners of private cars operate under special contracts with the carriers (plaintiffs herein), from the benefits of which the general public is excluded because of lack of money or unwillingness to furnish the equipment necessary to give them such special and better service.

14 Defendants further say that they are advised and so aver the fact to be that any greater or better service afforded by the railroads to one or more mines than is furnished to other mines is unduly and unlawfully preferential and discriminatory, no matter for what reason it is given, and that all the allegations contained in the bill of complaint seeking to justify such practice are irrelevant and immaterial.

Wherefore, having fully answered, defendants pray that the bill of complaint be dismissed in this cause, and for such other and further order as may be proper.

In testimony whereof, the defendants, Pocahontas Operators' Association, has caused its name to be signed hereto by its president, and said defendant Empire Coal & Coke Company has caused its name to be signed hereto by its president, with its corporate seal affixed, attested by its secretary, and defendant Pocahontas Fuel Company, Incorporated, has caused its name to be signed hereto by its president, with its corporate seal affixed, attested by its secretary.

POCAHONTAS OPERATORS' ASSOCIATION,
By----------,
President.

EMPIRE COAL & COKE COMPANY,
By----------,
President.

[Clerk's certificate to foregoing paper omitted in printing.]

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1927

INTERSTATE COMMERCE COMMISSION.

No. 9284.

CAR SUPPLY INVESTIGATION.

Submitted December 28, 1916. Decided January 18, 1917.

1. Car service rules of respondents, in so far as they relate to open-top coal and coke cars and to railroad owned or controlled refrigerator, heater, ventilated and insulated cars, found unreasonable to the extent that they differ from the car service rules herein prescribed.
2. Action with regard to car service rules for application to other classes of equipment deferred pending appointment by executives of a committee, vested with plenary power, to cooperate with this Commission at Washington in securing a more equitable distribution of equipment.

J. V. Norman and *J. H. Townshend* for Southern Hardwood Traffic Association, and other associations.

Francis B. James, Clarence B. Hewes, D. C. Wood, G. D. Wood, and *K. U. Meguire* for Southern Appalachian Coal Operators' Association.

J. V. Norman, F. B. Montgomery, J. S. Brown, Charles Rippin, J. S. Marvin, F. T. Bentley, D. F. Hurd, and *J. E. Wilson* for National Industrial Traffic League.

E. F. Morgan and *E. E. Winters* for Public Service Commission of West Virginia.

R. G. Phillips for International Apple Shippers' Association.

W. A. Clark for New England Industries' Demurrage Bureau.

J. S. Marvin for National Automobile Chamber of Commerce.

John M. Pritchard for Gum Lumber Manufacturers' Association.

Thomas B. Moore for Michigan Manufacturers' Association, Wabash Portland Cement Company, and other companies.

E. C. Nettles for Chamber of Commerce of Battle Creek and of Jackson, Mich.

John C. Brinkley and *John C. Graham* for Chamber of Commerce of Jackson, Mich., Consumers Power Company, and Michigan Light Company.

James L. Davidson, M. W. Bush, Horace Hammond, Harry Knight, M. J. Maloney, and *C. A. Bryan* for Albama Coal Operators' Association, Chamber of Commerce of Birmingham, Ala., Imperial Coal & Coke Company, and other companies.

A. G. T. Moore for Southern Pine Association.

H. J. Campbell and *J. S. Brown* for Board of Trade of the city of Chicago.

W. L. Andrews for Consolidated Coal Company, Incorporated.

J. Keavy for Chamber of Commerce of Indianapolis, Ind.

G. F. Thomas for Arkansas Soft Pine Bureau.

George J. Bolender for Chamber of Commerce of Kalamazoo, Mich.

C. P. White for Pittsburgh Vein Operators' Association of Ohio.

C. S. Paisley and *Robert Buko* for Valley Camp Coal Company.

Louis B. Wehle and *John J. Telford* for Louisville Board of Trade.

D. F. Hurd for Chamber of Commerce of Cleveland, Ohio.

J. E. Wilson for Chamber of Commerce of Youngstown, Ohio.

M. F. Gallagher and *E. P. Wilkinson* for all coal operators on Chicago & Eastern Illinois Railroad, Cincinnati, Hamilton & Dayton Railroad, and Chicago, Terre Haute & Southeastern Railroad in Indiana.

E. E. Eversull for W. T. Ferguson Lumber Company of St. Louis.

C. H. Rodehaver for various lumber shippers.

Harry J. Hood for Detroit City Gas Company.

F. E. Reeves for Detroit Coal Exchange.

Wm. H. McCloud for Buick Motor Company.

E. M. Peterson, J. B. Forest, Donald McDonald, Fred S. Bell, A. L. Wilkinson, Walter Colyer, and *R. R. Fauntleroy* for various public utility and manufacturing companies.

George Stuart Patterson and *C. C. Paulding* for Executive Committee of the American Railway Association.

C. B. Heiserman and *J. W. Roberts* for Pennsylvania system.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Cincinnati Northern Railroad Company, and Wheeling & Lake Erie Railroad Company.

R. Walton Moore, William M. Bullitt, D. E. Spangler, and *S. S. Bridgers* for Norfolk & Western Railway Company.

William A. Northcutt, C. B. Phelps, and *J. A. Ridgely* for Louisville & Nashville Railroad Company.

Charles S. Belsterling for Bessemer & Lake Erie Railroad Company, Union Railroad Company, and Elgin, Joliet & Eastern Railroad Company.

C. H. Markham, R. V. Fletcher, H. R. Newlean, W. L. Park, and *J. F. Porterfield* for Illinois Central Railroad Company.

R. B. Scott and *W. L. Barnes* for Chicago, Burlington & Quincy Railroad Company.

B. I. Spock for New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, and Bangor & Aroostook Railroad Company.

T. H. Burgess for Erie, Chicago & Erie, New York, Susquehanna & Western, and New Jersey & New York railroad companies.

Wallace T. Hughes, J. L. Goree, and *N. D. Ballentine* for Rock Island lines.

R. Walton Moore and *E. C. Blanchard* for Seaboard Air Line Railway, and other southern carriers.

Thomas Bond and *J. H. Doggrell* for St. Louis & San Francisco Railroad Company.

C. C. Paulding, Parker McCollester, L. N. Alexander, and *H. J. Merrick* for New York Central lines.

William A. Eggers, C. W. Galloway, C. L. Thomas, William A. Parker, C. S. Wright, J. R. Kearney, W. G. Curren, and *S. T. McLaughlin* for Baltimore & Ohio system lines and Cincinnati, Hamilton & Dayton Railway Company.

William F. Peter for Chicago, Terre Haute & Southeastern Railway Company.

W. A. Cole and *W. C. Kendall* for Boston & Maine Railroad.

C. B. Strohm for Atchison, Topeka & Santa Fe Railway Company.

M. Nicholson for Great Northern Railway Company.

H. G. Herbel and *J. A. Somerville* for Missouri Pacific-Iron Mountain Railway system.

J. H. Rightmeyer for Kentucky & Indiana Terminal Railroad.

C. P. Stewart and *C. H. Bieber* for Michigan Central Railroad Company.

J. W. Merrow for Coal & Coke Railway Company.

J. M. Ferguson for Carolina, Clinchfield & Ohio Railway.

P. H. McCauley for Northern Pacific Railway Company.

J. T. Bougher for Central Railroad Company of New Jersey.

O. F. Clark for Grand Trunk Western Railway Company.

J. T. Bougher and *O. W. Stager* for Philadelphia & Reading Railway Company.

Alex. P. Humphrey for Southern Railway Company and Kentucky & Indiana Terminal Railroad.

R. L. McKellar and *B. G. Fallis* for Southern Railway Company.

Bird M. Robinson for Tennessee Railway Company.

F. B. Brown, Frank H. Alfred, and *H. O. Halsted* for Pere Marquette Railroad Company.

M. B. Casey for Delaware, Lackawanna & Western Railroad Company.

W. C. Ranous for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

J. B. Heafer for International & Great Northern Railway Company.

N. D. Ballantine for El Paso & Southwestern Company.

Edward E. Kerwin for Minneapolis & St. Louis Railroad Company.

W. A. Collie for New York, Chicago & St. Louis Railroad Company.

J. P. Stevens, Henry Taylor, jr., and *E. P. Goodwin* for Chesapeake & Ohio Railway Company.

Henry J. Hart for Bangor & Aroostook Railroad Company.

J. S. Leeds for Santa Fe Refrigerator Despatch Company.

Nathan L. Miller and *Fred S. Stow* for Delray Connecting Railroad Company.

C. J. McPherson for Toledo, St. Louis & Western Railroad Company.

L. A. Brown for Chicago Great Western Railroad Company.

G. W. Thompson for Detroit, Toledo & Ironton Railroad Company.

C. P. Torrey for Hocking Valley Railroad Company.

F. B. Barr for Wheeling & Lake Erie Railroad Company.

J. E. Fairhead for Kansas City Southern Railway Company.

E. B. Kennedy for Detroit Terminal Railroad Company.

T. H. Hervey for Ann Arbor Railroad Company.

W. L. Barnes for Northern Pacific Railway Company and Colorado & Southern Railway Company.

W. C. Steffa for Chicago & Alton Railroad Company.

E. B. Woodmanse and *B. I. Forsythe* for Missouri, Kansas & Texas lines.

C. L. Wallace for Texas & Pacific Railway Company.

C. E. Lytle for Duluth, South Shore & Atlantic Railway Company and Mineral Range Railroad Company.

J. K. Fahey for Gulf & Ship Island Railroad Company.

B. F. Kirkland for Georgia & Florida Railway.

A. L. Christiansen for Elgin, Joliet & Eastern Railway Company.

V. P. Turnburke for Chicago, Milwaukee & St. Paul Railway Company.

W. E. Chambers for Louisville, Henderson & St. Louis Railway Company.

W. E. Farris for New Orleans Great Northern Railway Company.

E. W. Sandwich for Atlanta & West Point Railroad Company, Western Railway Company of Alabama, and Georgia Railroad.

C. E. Hix for Seaboard Air Line Railway.

Charles A. Vilas and *E. E. Betts* for Chicago & North Western Railway Company.

A. S. Wright for Lehigh Valley Railroad Company.

J. W. Smith for Western Maryland Railway Company.

G. W. Kirtley for Erie Railroad Company.

E. H. De Groot, jr., and *C. B. Cardy* for Chicago & Eastern Illinois Railroad Company.

Grant W. Taylor for Southern Railway Company, Mobile & Ohio Railroad Company, and other companies.

O. C. Castle for Southern Pacific system lines.

J. T. King, W. E. Kay, and *S. A. Stockard* for Atlantic Coast Line Railroad Company.

L. A. Anthony for Boston & Albany Railroad Company.
Fitzgerald Hall, *E. M. Werner*, and *E. M. Wrenne* for Nashville, Chattanooga & St. Louis Railway.
D. I. Forsyth for Wabash Railway Company.
John C. Doolan, *E. F. Trabue*, and *W. H. Newman* for Chicago, Indianapolis & Louisville Railroad Company.
William Mosby and *J. M. Herbert* for St. Louis Southwestern lines
H. G. Sargent for New Orleans & Northeastern Railroad Company, Alabama, Vicksburg Railway Company, and Vicksburg, Shreveport & Pacific Railway Company.
R. K. Smith for Mississippi Central Railroad Company.
A. F. Currier and *A. R. Whaley* for New York, New Haven & Hartford Railroad Company and Central New England Railway Company.
C. P. Stewart and *F. G. Minnick* for Wheeling & Lake Erie Railroad Company.
William Bartley for Lake Erie & Western Railroad Company.
J. W. Trueb for Vandalia Railroad Company.
F. C. Welch for Grand Rapids & Indiana Railway Company.
Edson Rich and *William Whitney* for the Union Pacific system.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

The present conditions of car distribution throughout the United States have no parallel in our history. In some territories the railroads have furnished but a small part of the cars necessary for the transportation of staple articles of commerce, such as coal, grain, lumber, fruits, and vegetables. In consequence mills have shut down, prices have advanced, perishable articles of great value have been destroyed, and hundreds of carloads of food products have been delayed in reaching their natural markets. In other territories there have been so many cars on the lines of the carriers and in their terminals that transportation service has been thrown into unprecedented confusion, long delays in transit have been the rule rather than the exception, and the operation of established industrial activities has been made uncertain and difficult. These conditions have made necessary a far-reaching investigation by the Commission and now urgently demand prompt, decisive action.

In response to many complaints from all parts of the country, the Commission, upon its own motion, on November 4, 1916, entered upon a general investigation covering all sections of the United States "concerning the supply, exchange, interchange, and return of freight cars, and all rules, regulations, and practices relating thereto," with a view of issuing such order or orders as the Commission might deem appropriate. A hearing was held at Louisville, Ky., and witnesses

representing substantially all of the principal carriers of the country were examined with reference to their supply and use of freight cars. Evidence on the part of shippers and consignees was also taken. It is not our purpose at this time to review in detail the facts which were developed of record. For present purposes it is sufficient to state that for some time prior to the Commission's investigation there had been a general misuse of freight cars by substantially all of the respondent carriers. The substance of these misuses was the failure to observe the then effective car service rules 1, 2, 3, and 4, which provide for the return of cars to the owning roads, stated in Exhibit A of the appendix, adopted by the American Railway Association, whose members include all of the principal carriers of the United States subject to the act. The failure to observe these rules became a common practice as the volume of traffic increased during the past few months. Cars received for a line haul by foreign carriers were used for continuous local service on those lines and those received for switch movements received the same usage. These practices were frankly admitted by substantially all carriers, and while on behalf of some lines a desire to observe car service rules was expressed, it was stated that they could not do so unless other lines would also conform to those rules. The misuses of equipment resulted in depriving the owning lines of cars which they had provided for the transportation of coal, grain, perishable commodities, and other articles, in diverting such cars from the normal channels to the transportation of other commodities in other territories, in reducing in large measure the ability of certain carriers to serve the shippers and consignees of freight located on their lines and the lines of their connections, and in denying to many shippers and consignees such transportation facilities as were necessary to them and such as they would have received if freight cars had been handled in accordance with car service rules. Embargoes were placed by some lines against the movement of their own coal cars beyond their rails, for which they gave the explanation that such measures were necessary in order to retain on their own lines sufficient coal cars to serve the communities dependent on them for fuel—a practice which had been held unlawful in *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co.*, 22 I. C. C., 39, to which further reference will be made.

Following the disclosure of these and other facts of record, and on November 14, 1916, while the hearing was still in progress, the carriers were requested by the presiding Commissioner to return foreign open-top cars and refrigerator cars to the owning lines, either loaded or empty, without delay. To this request all of the carriers which were represented at the hearing gave their assent and filed severally their instructions for such return of these cars. At the hearing the car-

riers were requested to lift the embargoes which had been placed against the movement of their coal cars beyond their rails.

During the progress of the investigation it was suggested to the carriers that prompt action be taken by their executives to relieve the deplorable conditions found to exist. In response to this suggestion, at a meeting of the American Railway Association on November 15 a conference committee on car efficiency,[1] hereinafter called the car efficiency committee, was created "to sit constantly in Washington, to deal with the car situation." That committee and the car service commission of the American Railway Association, the latter being hereinafter referred to as the car service committee, went to Louisville and held an informal conference with the presiding Commissioner. There were present, representing the carriers in addition to counsel, the following: C. H. Markham, president of the Illinois Central; W. G. Besler, president of the Central Railroad of New Jersey; E. J. Pearson, vice president of the New York, New Haven & Hartford; W. L. Park, vice president of the Illinois Central; G. L. Peck, vice president of the Pennsylvania lines west; C. M. Sheaffer, general superintendent of transportation of the Pennsylvania Railroad lines east; W. R. Scott, vice president and general manager of the Southern Pacific; H. E. Byram, vice president of the Chicago, Burlington & Quincy; George Hodges, chairman of the committee on relations between railroads of the American Railway Association. At this conference, with reference to the creation of the car efficiency committee, Mr. Markham read a statement in which, among other things, it was said:

> The American Railway Association has delegated full authority to this committee to handle the car interchange question. We propose to increase the per diem charges on December 1, on which date we expect the proposed increase in demurrage charges will go into effect. We also propose to put into effect penalties for diversion of and delays to equipment on January 1, the earliest practicable date.

This committee took up its work in Washington and among its first acts were directions for the return of open-top cars and fruit refrigerator and heater cars to the owning lines, as shown by circulars No. 1750, issued November 23, 1916, and No. 1752, issued November 24, 1916, through the general secretary of the American Railway Association. These are as follows:

CIRCULAR NO. 1750.

On account of the acute shortage of open cars in certain sections of the country, Commissioner McChord on November 14 issued a direction to all railroads requiring the return of such foreign cars to their owners, loaded or empty.

[1] This committee consisted of George Hodges, chairman; C. M. Sheaffer, general superintendent of transportation of the Pennsylvania Railroad lines east; E. J. Pearson, vice president the New York, New Haven & Hartford; W. A. Worthington, vice president of the Southern Pacific; W. L. Park, vice president of the Illinois Central; and E. H. Coapman, vice president of the Southern Railway.

It is the opinion of the conference committee on car efficiency that this course should be followed by all railroads, regardless of car balances. It is therefore requested that until further advised:

All foreign open-top cars be at once returned to their owners, either loaded or empty;

(A) direct, if belonging to direct connections.

(B) through the proper home route, if belonging to other than direct connections.

CIRCULAR NO. 1752.

There has developed in various sections of the country an acute shortage of fruit refrigerator and heater cars to move perishable traffic, which, on account of weather conditions, can only be transported in such equipment.

To relieve this critical situation, the conference committee on car efficiency requests that all railroads take immediate steps to facilitate the prompt return of such cars to the home territory.

On December 1, 1916, the car efficiency committee took action with reference to the relocation of box cars, which was announced to the members of the American Railway Association in circular No. 1762, reading in part as follows:

In circular issued November 29, you were advised that certain sections of the country are suffering greatly from shortage of box cars, and immediate relief must be secured.

This shortage is caused by a deficiency in box-car equipment in all sections of the country, except in central freight, trunk line, and New England territories. Ordinary means will not remedy the situation; emergency measures are necessary.

To this end it is directed:

That lines in the territories named below shall forthwith, and until further notice, deliver to their western and southern connections a percentage of box cars, either loaded or empty, in excess of those received from such connections, as shown by the percentages below:

	Per cent.
Railroads in group 1, having box cars on their line in excess of number owned..	30
All railroads in groups 2 and 3, regardless of number of box cars on line.....	20
All railroads in group 5, regardless of number of box cars on line.....	10
All railroads in group 6, regardless of number of box cars on line.....	20
All railroads in group 7, regardless of number of box cars on line.....	15
All railroads in group 8, regardless of number of box cars on line.....	10

NOTE.—Groupings in accordance with car shortage and surplus statements issued by American Railway Association.

The principal carriers composing the stated groups are named in Exhibit B of the appendix, which also shows the percentage on certain dates of (*a*) all freight cars, (*b*) box cars, (*c*) gondola coal and coke cars, on the lines of the several carriers to the cars of those classes owned.

In spite of the efforts which had been made to put a stop to the diversion and misuse of foreign refrigerator cars and coal cars the Commission's inspectors day after day reported numerous instances of such diversion and misuse. Similar reports were made to the Commission by a number of individual carriers. It appeared that the car efficiency committee was not securing obedience to its direc-

tions, and, on December 4, 1916, the following telegram was sent to Mr. Markham:

C. H. MARKHAM, WASHINGTON, D. C., *December 4, 1916.*

President Illinois Central Railroad Company, Chicago, Ill.:

I have brought all of the matters connected with the car shortage investigation to the attention of the Commission, including the efforts made by the conference committee. Based upon my report to the Commission and its knowledge of the situation, I am requested by the Commission to say that it is disappointed in the progress made by the conference committee on car efficiency. So many misuses of equipment have been brought to the Commission's attention that it can not feel that the order to return such equipment to owning lines promptly is being obeyed. There also seems to be doubt about the committee's power. Carriers are not responding to the committee's request for information as they should and cars continue to increase upon various lines. Something must be done at once to relieve the situation. We believe the present conditions can be promptly relieved if vigorous action is taken. Unless the conference committee is given sufficient power and uses it without hesitation in its cooperation with this Commission, and unless the individual carriers obey their orders, no good results can be obtained by such cooperation.

C. C. MCCHORD.

This resulted in the following interchange of telegrams:

C. C. MCCHORD, *Washington, D. C.:* DECEMBER 4, 1916.

Wire date. I am heartily in accord with everything you say in regard to returning cars. There is no improvement in our condition. We own 62,595 commercial cars. October 31 there were 51,828 commercial cars on our line, or approximately 83 per cent of ownership. November 15 there were 51,419, and November 29, 51,389, a decrease of 439 compared with October 31 and 30 compared with November 15. Situation our shippers simply desperate. Some of our people doing big business owing to lack of cars are forced to borrow money to protect pay rolls when according to sales they should have handsome bank account. Connections having our cars, regarding which you have complete record, are not returning them. We are and will continue to furnish all data desired. I appeal to you to force lines having 11,206 excess cars belonging to us to return them at once.

C. H. MARKHAM.

C. H. MARKHAM, WASHINGTON, *December 5, 1916.*

President Illinois Central Railroad Company, Chicago, Ill.:

Your wire received refers to conditions on Illinois Central, with which we are familiar through reports received and which are also true of other lines. I wired you as chairman of executive committee which conferred with me at Louisville and which I was informed was delegated for that purpose by action of all executives selected from the five sections of the country pursuant to the plan agreed upon in my first conference with you at Louisville. Sufficient time has elapsed since the proclamation at Louisville, followed by a similar order by the committee when it convened here, requiring the return of open-top cars to have substantially bettered condition of owning lines in this respect and to have returned open-top cars to their normal and proper uses. While some lines have obeyed that direction it is apparent that other lines have not done so. Percentages of open-top equipment on owning lines and inspectors' reports to Hodges amply demonstrate that fact. A similar fate has been met by the committee's proclamation of October 28 respecting the relocation of closed equipment. This Commission understood that the conference committee on car efficiency was

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vested with full authority to require the movement and relocation of cars by all railroads. If they have not already done so we feel that executives should define this committee's powers at once and inform the Commission of its authority. Otherwise obedience by some lines to directions to return cars and disobedience by others will only work hardship without securing adequate and substantial relief. If this is not to be dealt with by the executives in such a manner that no railroad will misuse equipment or disobey directions, given by the committee, this Commission desires to be advised of that fact.

C. C. McCHORD.

CHICAGO, ILL., *December 6, 1916.*

Hon. C. C. McCHORD,

Interstate Commerce Commission, Washington, D. C.:

Your telegram fifth. My position as chairman of committee was but temporary and for purpose of carrying out understanding with you. Mr. Park has been attending meeting executive committee American Railway Association in New York and wires that the conference committee sitting in Washington has been endowed with full authority along lines suggested by Interstate Commerce Commission. The increase in per diem agreed on and progressive demurrage will have beneficial effect on car efficiency.

C. H. MARKHAM.

A meeting of the executive committee of the American Railway Association was held in New York on December 5, 1916. On that date, in order that that committee might have a full understanding of the Commission's position, a telegram was sent to George Hodges then at New York City, repeating in full the second and third telegrams above quoted. At that meeting the work of the car efficiency committee was delegated to the car service committee, which, as reconstituted, consisted of Messrs. Park, Pearson, Sheaffer, Worthington, and Fairfax Harrison, president of the Southern Railway, its chairman, by whom the following statement was submitted to us, defining the powers of the car service committee:

The powers of the commission on car service are defined by the amended per diem and car service rules as set forth in A. R. A. circular No. 1751, of which a copy is submitted herewith. In addition, by special vote of the American Railway Association, the commission on car service is authorized to add to or modify the existing rules with the approval of the executive committee of the American Railway Association. A copy of this resolution, as set forth in said circular No. 1751, is also submitted herewith.

Prior to the meeting of the American Railway Association at which the present rules were adopted a representative meeting of executives of many railroads was held at which those present pledged themselves to give effect to the rules and support the commission on car service in the performance of its duties.

In compliance with the request of Commissioner McChord that a committee representing the railways cooperate with the Interstate Commerce Commission in an effort to relieve the car shortage which exists in certain parts of the country the executive committee of the American Railway Association has authorized the commission on car service to sit in Washington with a representative of the Interstate Commerce Commission and to make such extraordinary recommendations to the roads as in its judgment would meet the necessities of the present emergency.

The commission on car service will depend for the enforcement of such recommendations upon the substantial good faith of the carriers which assented to its crea-

tion and to its performance of the duties outlined above. To assure this the commission on car service is prepared to utilize the force of public opinion which it feels it has behind it.

On December 15 the car service committee issued its circular No. 3, set forth as Exhibit C of the appendix, which amended and interpreted circular No. 1762. Among other things this circular made the following reference to carriers in group 4:

> Whenever roads in group 4 not covered by American Railway Association circular No. 1762, are in possession of their ownership of box cars, they are expected to help their western and southern connections which have deficiencies by delivering to them a 20 per cent excess of box cars above the number received.

The record before us, as well as the numerous complaints received by the Commission daily from certain sections of the country, shows that the present car shortage conditions are serious and require immediate relief. The supply of coal in many communities is inadequate, and the prices demanded are very high. Public service companies, which furnish light, heat, and power to cities and towns, face a possible interruption of this indispensable service through lack of fuel. At the time of the hearing some of the carriers themselves had but two or three days' supply of coal, others had entirely exhausted their stored supply and were dependent upon the daily movement of loaded coal cars for their motive power. Commercial coal was being confiscated for this purpose, with its resultant loss of immediate supply to the intended consignees. In the event of severely cold weather which every winter brings, a continuation of present conditions will inevitably cause hardship and suffering.

The need of restoring to their proper uses railroad owned or controlled refrigerator cars and heater, ventilated, and insulated cars is not less urgent. Lack of timely and adequate supply of cars suitable for such service has already caused severe losses. A large proportion of those classes of cars have left the rails of certain originating carriers and although some are being returned, their home movement is slow, while others are used for the local movement of dead freight on foreign lines. The misuse of foreign refrigerator cars has continued notwithstanding the directions for their return to the owning lines. In this connection we quote the following letter recently addressed to the Commission by the superintendent of transportation of the Northern Pacific Railway Company and made a part of this record:

> ST. PAUL, MINN., *December 23, 1916.*
>
> Referring to movement of refrigerators: We found N. P. 95393 at the Updike Elevator, C. & N. W. tracks in Milwaukee, Wis., loaded with grain. N. P. 95953 was with it, also loaded with grain. Following is record of these two cars since they left our line: 95393, to C., M. & St. P. at Minn. Tfr. 8–13–15, I. H. B. 8–15, N. Y. C. & St. L. 8–15, Wab. 8–17, N. Y. C. & St. L. 8–28, Pa. R. R. 9–18, N. Y. C. & St. L. 9–29, C. H. D., L. & N. 10–9, Pa. Ry. Term. 10–12, L. & N. 10–15, V. & S. W. 10–22, Ironton 10–27,

L. & N. 10–29, Interstate 11–22, L. & N. 11–24, L. H. St. L. 12–31, L. & N. 1–3–16, C. C. C. & St. L. 1–23, L. & N. 1–28, N. & W., L. & N. 2–18, Pa. Co. 3–13, Pa. R. R. 3–14, Pa. Co. 4–3, L. & N. 4–15, N. & W. 4–19, C. C. O. 4–20, L. & N. 5–5, C. C. O. 5–16, N. & W. 5–16, L. & N. 5–17, N. & W. 5–26, L. & N. 6–3, C. H. D. 6–7, L. & N. 6–28, C. H. D. 7–5, C. & O. 7–15, Big Four 7–20, C. & O. 7–31, L. & N. 8–18, B. & O. 8–19, C. & O. 8–25, Big Four 10–2, C. & O. 10–8, C. H. D. 10–17, C. & O. 10–17, N. & W. C. C. C. & St. L. 12–3.

95953 to C. St. P. M. & O. at Minn. Transfer 11–15–16, C. & N. W. 11–18, Omaha 12–13. You will note how some lines handle refrigerator cars.

Yours, truly,

P. H. McCauley, *Supt. Transportation.*

On many southern and western lines the available supply of box cars is but a fractional part of those which would be required to move the traffic offered. The flow of traffic northbound and eastbound has carried box cars from the originating lines into central freight association, trunk line, and New England territories. At many points in these territories there are large accumulations of cars due to many causes, such as the unprecedented traffic, lack of adequate yard, trackage, warehouse and elevator facilities, insufficient motive power, inefficient operation, lack of ocean-carrying space, the holding of cars by shippers and consignees for speculative purposes, and the failure of consignees to unload promptly. The result is slow movement and disorganized service, conditions to which a reduction in the number of cars on line would give relief.

Urgent as is the need of relief for these conditions the respondents, with but few exceptions, have failed to afford such relief. They have assured the Commission that they would put a stop to the diversion and misuse of foreign open-top cars and refrigerator cars, and would return those cars to their owners without delay, but since that assurance was given hundreds of instances of diversion and misuse have been called to our attention by owning lines and by our inspectors. While there has been some response on the part of some carriers to the Commission's efforts to restore cars suitable for the transportation of coal and perishable products to their proper channels, it is apparent that there is still a general misuse of such equipment. We have received many appeals not only from shippers but from carriers for the entry of a formal order to remedy the situation. For the purpose of affording the carriers an opportunity to be heard upon the question, the respondents were ordered to show cause on December 28, 1916—

why an order should not be entered requiring respondents to return to their owners, without diversion or misuse, all foreign open-top cars and all railroad owned or controlled refrigerator, heater, ventilated, and insulated cars after being unloaded at destination, either loaded or empty (*a*) direct, if belonging to direct connections, (*b*) through the proper home route if belonging to other than direct connections; or in accordance with such other rules as may be found reasonable and be prescribed;

And to return all other foreign freight cars to their owners in accordance with car service rules 1, 2, 3, and 4 of the American Railway Association or to effect a relocation of such cars in accordance with such other rules as may be found reasonable and be prescribed.

At the hearing on this order further testimony was taken and there was some argumentative discussion of the issues before us. The car service committee asks that no car service rules be prescribed by order prior to March 1, 1917. When analyzed, the reasons stated for opposing the entry of an order at this time prescribing such rules are (1) that the code of car service rules now in effect is practically new, and, on experience, may require amendment; (2) that a prompter movement of cars in the future may be expected by reason of the per diem increase from 45 cents to 75 cents, the progressive demurrage charges recently made effective, and the application on January 1, 1917, of the diversion penalty (see Exhibit A, appendix) to open-top cars and refrigerator cars, and on March 1, 1917, to all other cars; (3) that the code of car service rules can not be applied to box cars consistently with the directions which have been given by the car service committee for the distribution of box cars without regard to ownership; (4) that the code of car service rules is not sufficiently flexible to provide for peculiar and difficult situations which may arise; (5) that the penalty of $5,000 provided in section 16 of the act for a violation of an order of the Commission made under section 15, is wholly disproportionate to the offense of diverting a single car. We find these reasons wholly unconvincing in so far as they refer to open-top coal cars and refrigerator cars. It is true that the present code of car service rules appears to require some amendment. But the entry of an order by the Commission would not preclude the further modification or revision of those rules upon a proper showing of reasonable necessity therefor. Likewise the anticipated prompter movement of cars presents no sufficient reason for withholding an order, especially in view of the fact that on January 13, 1917, the diversion penalty was entirely removed, as shown by the following resolution of the car service committee:

Diversion penalty now in effect on all cars except box cars including automobile and furniture cars has been postponed until further notice, this postponement being retroactive from January 1, 1917.

The increased per diem and the progressive demurrage charges may to some extent facilitate the movement of equipment, but they are unlikely to prevent the diversion and misuse of cars at a time when the demands for transportation are so great. In any event they are factors consistent with an order for the observance of reasonable car service rules and which, to the extent that they are effective, would promote such observance. Should the request of the car service committee that no order be entered prior to March 1, 1917, be granted, the

winter months will have passed without such relief as an order can afford.

The executive committee of the American Railway Association also appeared in opposition to the entry of an order at this time, but the testimony given in behalf of that committee added nothing material to the objection of the car service committee above referred to. Certain respondents, notably the Louisville & Nashville, the Chicago, Burlington & Quincy, and the Northern Pacific, expressed the desire that an order be entered.

In opposing the entry of an order requiring the return of box cars to the owning roads, the car service committee points out that in its efforts to secure a relocation of such cars the ownership principle has been wholly disregarded. The requirement that box cars be delivered to southern and western connections in stated percentages in excess of receipts is admittedly an emergency measure and our findings herein will not be inconsistent therewith.

The substance of the position of the car service committee is that the relocation of cars may be properly left to its activities. The propriety of this course is made doubtful by the fact that the car service committee has not been adequately empowered to deal with the situation, and has not secured the effective cooperation of the carriers as a whole. Although we were assured that a committee would be constituted with full powers, this was not done. The powers of the car service committee to secure the relocation of cars by the respondents are recommendatory in character, as shown by the statement of its powers above set forth, and as testified by a member of that committee at the hearing on December 28. That it has not been able to secure the cooperation of a substantial number of the respondents is conclusively shown by its circular No. 5, issued under date of December 18, 1916, set forth as Exhibit D of the appendix. In this connection it is proper to state that the members of the car service committee, although acting with wholly insufficient power and without the support of some of the largest railroad systems, have made an earnest and intelligent effort to bring relief to existing car service conditions.

Immediately following the hearing on December 28 the president of the American Railway Association notified the Commission through one of its members that the chairman of the car service committee had resigned, and that this committee would be transferred from Washington to the city of New York. Subsequently an illuminating statement of the situation, fully set out in the appendix, marked Exhibit E, was transmitted to the Commission.

While the question of the Commission's jurisdiction to enter an order requiring the carriers to observe reasonable rules for the

exchange, interchange, and return of cars used in interstate transportation has not been questioned upon this record, we are not unmindful of the general discussion of that question and others relating to car shortage found in our last annual report. What was there discussed covered several phases of car supply and distribution. It was made the basis of the following recommendation:

> That the Commission be given definite and specific authority to prescribe for all carriers by rail subject to the act rules and regulations governing interchange of cars, return of cars to the owning road, the conditions and circumstances under which such cars may be loaded on foreign roads, and the compensation which carriers shall pay to each other for the use of each other's cars. The carriers should be required to publish, post, and file with the Commission, under the provisions of section 6 of the act, such rules and regulations prescribed by the Commission, and should be held to an observance of those rules and regulations just as they are held to an observance of their lawfully published, posted, and filed rates.

We have thus indicated in broad outline amendments of the act which in our judgment are urgently required by existing conditions. But for the purposes of the issue immediately before us we think the powers conferred by the act are sufficient to enable us to require the observance of rules for car service found on this record to be reasonable and which in large measure are the same as those adopted by the respondents themselves.

In *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co.*, *supra*, it appeared that the Illinois Central Railroad Company had established a rule prohibiting the sending of its coal cars loaded with coal to the lines of certain designated carriers in order to retain on its own line sufficient cars to serve the communities dependent on it for fuel. This rule was attacked as unlawful. It was held that the temporary confiscation by carriers of the cars of other railroads and the placing of embargoes against cars being sent off the lines of the owners are alike unlawful and that the railroads would be expected to make such rules for the return of cars as would terminate such abuses; that carriers are required to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon through routes and for the operation of such through routes, and that where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable. With reference to its power under the act, the Commission said:

> * * * the law does not assume that the Commission will take the initiative in these matters, and the carriers are called upon to establish the through routes and to maintain them. They have it within their own power to enforce rules as between each other by which this command of the law may be observed. If, however, as in this case, it is seen that the methods pursued by the carriers relating to the return of equipment are not such as to protect shippers against discrimination and injustice, this Commis-

sion may undertake to prescribe the conditions under which these through routes shall be maintained, for it is provided (section 15):

"That whenever the Commission shall be of the opinion that any individual or joint regulation or practice whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what individual or joint regulation or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall conform to and observe the regulations and practice so prescribed."

* * * * * * *

The law's requirements as to the duty of the carrier to the shipper to furnish equipment and maintain its through route carries with it necessarily the power on the part of this Commission to enforce rules which will permit the free interchange of traffic as between carriers. The carriers must keep their through routes open, and if they fail to do this because of the diversion or appropriation of cars, this Commission has it within its power to prescribe the conditions upon which such through routes shall be operated.

* * * * * * *

The carriers must make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon their through routes and for the operation of such through routes (section 1), and where they have failed in this respect and "are in violation of any of the provisions of this act" the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable (section 15).

The power of the Commission to require a carrier to permit its cars to move from its line to the rails of a foreign line is thus clearly defined, and it is a necessary corollary that the observance of a reasonable rule for the return of such cars to the owning line may also be required. Section 1 requires the carriers subject to the act—

* * * to establish through routes, * * * to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and *return* of cars used therein, and for the operation of such through routes * * *.

* * * * * * *

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce * * * just and reasonable regulations and practices affecting * * * the facilities for transportation * * * and all other matters relating to or connected with the * * * transporting * * * of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt * * * transportation of property * * *.

Section 13 of the act provides:

* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case * * *. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money.

We have been asked by representatives of shipping interests to invoke the provisions of sections 12 and 20 of the act. From these sections we quote the following:

> * * * The Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof * * *. (Sec. 12.)
>
> That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them. (Sec. 20.)

It is thus asserted that in so far as the present car service rules of the carriers are reasonable, but are not observed, we are authorized to require their observance by writ of mandamus under sections 12 and 20 of the act. It is also suggested that an order may be made by the Commission under the provisions of section 13, *supra*, and it is argued that if neither of these remedies were available the carriers might easily nullify the requirements of section 1 with respect to reasonable rules governing the exchange, interchange, and return of cars. The contention is that, although it has been held that if a car service regulation or practice of the carriers is found to be unreasonable and in violation of the act, we can require the carriers, in a proceeding under section 15, to cease and desist from the violation and to establish and enforce a reasonable practice and regulation, *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co., supra;* yet if, on the other hand, the regulation or practice were reasonable, but not observed, there would be no remedy under the act. In this connection it is pointed out that there is no substantial difference in effect between an unreasonable rule which is enforced and a reasonable rule which is not enforced.

We do not resort to the provisions of sections 12 and 20, *supra*, however, because certain changes in the present car service rules appear to be necessary, and for the reason that we do not deem it necessary at this time to take recourse to such drastic procedure, in view of our conclusion that the act empowers us to make an order requiring the observance of car service rules which we may find to be reasonable. In this connection it may be stated that a few days before the institution of this investigation bills in equity were filed in the district court of the United States for the northern district of Illinois by certain coal companies, operating mines on the lines of the Chicago & Eastern Illinois and the Chicago, Terre Haute & Southeastern,

76367°—17——3

asking for an order requiring the defendant carriers to return coal cars to the lines named in compliance with car service rules. The Commission's investigation was in progress when a decision was rendered denying the relief prayed for upon the ground that Congress having given the Commission power of supervision and enforcement under section 1 of the act, that court was without power, in advance of action by the Interstate Commerce Commission, to relieve the situation.

It is clear that the entry of a formal order is necessary to protect shippers, consignees, and the general public, but not less is it necessary to protect those carriers which have sent foreign cars home in obedience to the direction at the hearing but which have not received their own cars from other lines. It would indeed be an anomaly if certain carriers could with impunity violate section 1 by failure to observe reasonable rules for the "exchange, interchange, and return of cars," and by so doing prevent other carriers from furnishing the transportation upon reasonable request which is required by the same section. While all the members of the Commission are not in accord with respect to the powers of the Commission to make an order in this case, the wrongs are flagrant, and even if there were doubt as to the Commission's power to give full relief by formal order we think that in the emergency that doubt should be resolved in favor not only of the carriers who are wrongfully deprived of the use of their cars, but in favor of shippers and of the general public, who would be without adequate remedy if, having the power, we fail to act.

For purposes of bringing immediate relief to existing conditions, the present code of car service rules, with certain modifications, will have our approval for application until May 1, 1917, in so far as they relate to open-top coal and coke cars, and to railroad owned or controlled refrigerator, heater, ventilated, and insulated cars. The modifications found necessary consist in the elimination of certain movements of foreign cars other than to the owning road, or in its direction, which the present code permits.

Upon all the facts of record we find—

A. That the present car service rules of respondents, stated in Exhibit A, appendix, are unreasonable to the extent that they differ from the following, which we find to be reasonable car service rules.

1. All foreign open-top coal and coke cars and all foreign railroad owned or controlled refrigerator, heater, ventilated, and insulated cars received under load may be forwarded to destination; when original lading is removed, or when received empty, they must be returned to their owners, either loaded or empty—

(*a*) Direct, if belonging to direct connections;

(*b*) Through the proper home route if belonging to other than direct connections.

(NOTE.—The home road shall have the right to demand the return of its empty cars at the junction point where delivered loaded.
This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.)

2. The proper home route for cars belonging to other than direct connections includes the following deliveries only:

(*a*) Loaded, consigned (via any route) to a destination on the home road;

(*b*) Loaded, consigned (via any route) to a destination on a direct connection of the home road; or

(*c*) Loaded, consigned to a destination on the road from which originally received, if such movement is in the direction of home; or

(*d*) Empty, to the road and at the junction point from which originally received.

3. (*a*) Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "for unloading."

A car received loaded in switching service, when the original lading is removed, must be returned to the home road, loaded or empty, if a direct connection within that switching territory; otherwise, unless it home routes from the switching line to some other road, it must be returned to the delivering road loaded or empty, in accordance with rules 1 and 2.

(*b*) An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "for loading."

The road delivering the car to the switching road must in all cases specify loading, route, and destination, which must be in accordance with rules 1 and 2.

The switching road must comply with the instructions of the delivering road.

4. These rules do not apply to cars reconsigned with original lading under duly filed and published tariffs until the original lading has been removed therefrom.

5. Any delivery of a foreign open-top coal or coke car or foreign railroad owned or controlled refrigerator, heater, ventilated, or insulated car, except as provided in these rules, is a diversion.

We further find:

B. That the practices of respondents in failing to observe the present car service rules, stated in Exhibit A, appendix, with regard to the return of foreign open-top coal and coke cars and foreign railroad

owned or controlled refrigerator, heater, ventilated, and insulated cars, to the extent that those rules are not modified by the rules found reasonable, *supra*, are in violation of section 1 of the act.

It is our view that the application to the car service rules herein found reasonable of a diversion penalty similar to that provided for in rule No. 3 of the code of per diem rules, stated in Exhibit A, appendix, would be proper.

An order will be entered accordingly requiring the establishment and observance of the car service rules herein found reasonable until May 1, 1917, and will take effect under the provisions of the act not less than 30 days from the date of the service thereof. This order will be subject to modification, and the effective date subject to extension, during that period, upon showing of reasonable necessity therefor.

The Commission is of the opinion that prompt relief for existing car supply conditions can be secured through executive action; that it is the duty of all the carriers at once to appoint a committee, as contemplated at the hearing, vested with plenary power to secure a relocation of cars, and to cooperate with this Commission at Washington, in order that we may be fully advised as to the situation from day to day. If this is done and it is found that any modification of our order is necessary, before or after the effective date thereof, the facts thus brought to our attention will be considered with that end in view. Unless this is done within 10 days from the service of this order, the entry of an order prescribing car service rules for other classes of equipment will be considered.

CLARK, *Commissioner*, dissenting:

I am fully sensible of the gravity of the existing conditions of transportation by railroad, and I appreciate the importance of adopting all reasonable measures for relief from the serious difficulties. I am, however, unable to agree with the majority report, either as to interpretation of the law and of our powers, or as to the conclusions reached.

The interpretation placed by the majority upon the act and the powers which it confers upon us is at variance with all of the interpretations heretofore adopted by the Commission and with the views which it has expressed on this subject.

In *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co.*, cited in the majority report, we said:

> No testimony has been taken in this case as to the rules that should be enforced and our power would not be exercised in any event without the fullest hearing as to the effect any order that the Commission might make would have upon the practices of the railroads of the country.

In the instant case the testimony of record as to the rules which the majority find to be unreasonable is to the effect that they have been very recently adopted and that no one can tell what their effect will be.

In *In the Matter of Car Shortage and Other Insufficient Transportation Facilities*, 12 I. C. C., 561, decided in January, 1907, separate reports were presented by the two Commissioners who heard all the testimony. In one of them it is said:

> If the Interstate Commerce Commission is to be vested with power to make rules under which railroads shall be required upon penalty to furnish cars to shippers, this Commission should also be empowered to make rules under which free interchange of cars shall be effected, or require railroads engaging in interstate commerce to make such rules for their own protection and provide for their enforcement.

In the other it is said:

> Some railroad men of prominence appearing before us seemed to think that the more effective regulation of the interchange of cars by carriers would of itself go far toward remedying the present car shortage. There seem to be strong reasons for thinking that the proposed car pool or car clearing house would result in a more effective car service. If some such adjustment can not be reached by the companies themselves it may be that legislation will become desirable and necessary.

These reports were unanimously agreed to by the Commission, and the significance of the expressions quoted, to the effect that the Commission did not have power to prescribe general rules relative to interchange of cars, and the possibility or probability that such legislation might become necessary, can not escape notice.

In its annual report of December 1, 1916, submitted to the Congress a few weeks since, the car shortage situation was discussed quite fully, and recommendation was made that the Commission be given authority in law to prescribe, for all carriers by rail subject to the act, rules and regulations governing the interchange and return of cars and the conditions and circumstances under which they may be used on foreign roads, and the compensation which one carrier should pay to others for the use of foreign cars.

I am not satisfied that this record discloses a proper basis for the finding that the existing car service rules are unreasonable, because, as noted, they have been in effect only since January 1, 1917, and the substance of the testimony relating to them was that no one could tell how satisfactory or efficacious they would be. I am not satisfied that the record contains a proper basis for the finding that the rules prescribed in the order herein are reasonable.

The underlying idea is that open-top coal and coke cars and railroad owned refrigerator, insulated, and ventilated cars shall be returned to their owners, while as to all other cars the American Railway Association rules are left to apply and ownership is disregarded. Were it not for the long established custom, voluntarily agreed to among the

railroads, under which all carriers members of the American Railway Association accepted the car service rules of that association and put their cars into service thereunder, there would be strength in the argument that the owner of the car is entitled to first claim on it. If as a matter of law carriers are required to promptly return to their owners coal and coke and refrigerator cars, I am unable to see why that same law would not extend to other kinds of cars.

The Commission is essentially an administrative body, exercising powers specifically delegated to it by the Congress. It also exercises quasi judicial powers, likewise delegated. But if the law is to be interpreted differently from time to time to fit conditions that obtain on the railroads, and the Commission exercises in a time of stress a power which it has not only never before felt that it had, but which it has several times said it did not have, it adds to its delegated administrative and quasi judicial powers legislative powers. for the exercise of which I can find no justification.

The times are abnormal, and they call for exercise of special effort on part of the railroads, the shippers and the receivers of freight, to the end that the highest possible efficiency may be secured from the available facilities. I agree with the view that the carriers ought to take hold of the situation vigorously and place plenary power in the hands of a committee to change their car service rules from time to time and in various sections of the country as may be appropriate to meet the unusual conditions.

While I have felt impelled to dissent from the majority view, I shall not undertake further to elaborate my objections.

I am authorized to say that COMMISSIONERS CLEMENTS and HALL concur in this dissent.

APPENDIX.

EXHIBIT A.

CIRCULAR No. 1751.

THE AMERICAN RAILWAY ASSOCIATION.

CODES OF CAR SERVICE AND PER DIEM RULES.

Office of the General Secretary, 75 Church Street.

W. W. ATTERBURY, President.
A. W. THOMPSON, First Vice President.
A. H. SMITH, Second Vice President.
J. E. FAIRBANKS, General Secretary and Treasurer.
H. J. FORSTER, Assistant Treasurer.

NEW YORK, *November 24, 1916.*

TO THE MEMBERS OF THE AMERICAN RAILWAY ASSOCIATION:

At the session of the Association held on November 15, 1916, the following resolutions were adopted:

Resolved, That a letter ballot be taken in the usual manner upon the question of amending Car Service Rules 1, 2, 3 and 4 and Per Diem Rules 1, 3, 11 and 19, as recommended by the Commission on Car Service, to take effect as of December 1, 1916, if approved by a majority of the membership, that membership to represent two-thirds of the cars owned or controlled by the association.

Resolved, That the Commission on Car Service be, and is hereby, empowered, with the approval of the Executive Committee, to add to or modify any of the Car Service or Per Diem Rules included and referred to in its report.

The total membership is 405, and the cars owned and controlled by members, 2,469,280. The majority requisite for approval is 203 members, owning and controlling 1,646,186 cars.

The vote on the foregoing resolutions was as follows:

Yes—298 memberships, representing 2,186,922 cars owned and controlled.

No—51 memberships, representing 164,741 cars owned and controlled.

Not voting—56 memberships, representing 117,617 cars owned and controlled.

Please take notice, therefore, that the proposition to amend Car Service Rules 1, 2, 3 and 4 and Per Diem Rules 1, 3, 11 and 19, to take effect as of December 1, 1916, and that the Commission on Car Service be empowered, with the approval of the Executive Committee, to add to or modify any of the Car Service or Per Diem Rules included in its report is, therefore, approved.

The amendments to the Codes of Car Service and Per Diem Rules are indicated in the attached Exhibit A.

Respectfully,

J. E. FAIRBANKS,
General Secretary.

EXHIBIT A.

CODE OF CAR SERVICE RULES.

PRESENT FORM.	AMENDED FORM.
1. Foreign cars must be promptly returned to their owners, and must be handled as prescribed by Rules 2, 3 and 4.	1. Foreign cars *received under load may be forwarded to destination; when the original lading is removed, or when received empty, they* must be handled as *provided in* Rules 2, 3 and 4. *Any delivery of a foreign car except as provided in these rules is a diversion.*
2. (*a*) Foreign cars must be utilized for loading to other lines in preference to home equipment, in accordance with Paragraph (*b*), (*c*) and (*d*) of this rule. (*b*) Loaded (via any route) so that the home road will participate in the freight rate, or (*c*) Loaded to the road from which originally received, if such loading is in the direction of the home road, but not otherwise, or (*d*) Loaded to an intermediate road in the direction of the home road, or NOTE.—A road or a combination of roads competing with the road owning the car from point of delivery to destination shall not be considered as an intermediate road or roads. (*e*) Cars may be loaded in local service in the direction of any junction point with the home road, subject to 3 (*c*), or (*f*) Cars may be loaded locally in an opposite direction from the home road or home route if to be loaded according to Rule 2 (*b*), (*c*) or (*d*).	2. Foreign cars *belonging to direct connections* must be *returned to the home road.* NOTE.—*The home road shall have the right to demand the return of its empty cars at the junction point when delivered loaded.* *This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.*
3. (*a*) If cars cannot be returned under load, as per Rule 2, they must be returned empty in accordance with this rule. (*b*) Empty cars belonging to a system having a direct connection should, subject to 3 (*c*), be delivered to such connection regardless of whence they came, or may be returned to delivering line. (*c*) The car owners shall have the right to demand the return of his empty cars at the junction point where delivered loaded. NOTE.—This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2. (*d*) Empty cars may be sent in an opposite direction from the home road or home route, if to be loaded according to Rule 2 (*b*), (*c*) or (*d*). (*e*) Empty cars may be delivered to connecting road, switching or otherwise,	3. *Foreign cars belonging to other than direct connections must be delivered:* (*a*) *Loaded (via any route), so that the home road will participate in the freight rate, or* (*b*) *Loaded (via any route)*, to a direct connection *of the home road, or* (*c*) *Loaded to the road from which originally received.* (*d*) Empty *to the road and at the junction point from which originally received.*

to be loaded in accordance with Rule 2 (*b*), (*c*) or (*d*), but not otherwise.

(*f*) When necessary to return cars empty belonging to roads other than direct connections, they may be delivered to the road from which received.

(*g*) By agreements between the railroads over which they are to move, empty cars may be short-routed, subject to Rules 1, 3 and 4, at a reciprocal rate of 3½ cents per mile, plus bridge and terminal arbitraries, with a minimum of 100 miles for each road handling the car. The road requesting the movement must pay the charges.

(*h*) Cars received in road or switching service unloaded at a point where there is a direct connection with the owner must be returned to the owner at that point, subject to 3 (*c*).

4. Cars received loaded in switching service must be confined to switching territory and when made empty must be returned to the owner if a direct connection within that territory or otherwise to the road from which received, or may be loaded within switching territory in accordance with Rule 2 (*b*).

4. (*a*) *Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "For Unloading."*

A car received loaded in switching service, *when the original lading is removed,* must be returned to the *home road, loaded or empty,* if a direct connection within that *switching* territory; otherwise *unless it home routes from the switching line to some other road it must be returned to the delivering road loaded or empty; if loaded it must be in accordance with Rule 3.*

(*b*) *An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "For Loading."*

The road delivering the car to the switching road must in all cases specify loading, route and destination, which must be in accordance with Rules 2 and 3.

The switching road must comply with the instructions of the delivering road.

NOTE.—Car Service Rules 1 to 4, inclusive, do not apply to cars reconsigned with original lading under duly filed and published tariffs.

NOTE.—Car Service Rules 1 to 4, inclusive, do not apply to cars reconsigned with original lading under duly filed and published tariffs.

CODE OF PER DIEM RULES.

PRESENT FORM.

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where Per Diem is not reported to car owner within six months

AMENDED FORM.

1. The rate for the use of freight cars shall be 45 cents per car per day, *but may be increased for a specified period to an amount not in excess of $1.25 per car per day,* which shall be paid for every calendar day, and shall be known as the per diem

EXHIBIT B.

Car location statements.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 1.										
Bangor & Aroostook	5,372	63.71	68.37	58.75	57.99	59.54	59.53	64.38	63.66	62.64
Boston & Albany	7,765	113.73	128.64	128.91	129.72	122.52	126.53	122.05	121.06	114.06
Boston & Maine	24,025	153.98	165.39	161.49	153.71	147.26	143.59	140.05	141.96	141.87
Central Vermont	2,924	105.61	99.42	101.02	101.87	102.31	103.00	97.84	90.49	90.90
Maine Central (inc. Portland Terminal Company)	8,710	.....	.....	128.50	131.93	118.17	114.08	110.70	113.09	112.14
N. Y., N. H. & H	34,375	126.18	130.23	130.28	122.31	119.22	114.82	108.12	108.47	117.78
Rutland	2,568	76.58	79.64	72.41	75.83	71.52	79.40	77.88	79.28	72.16
Total	.....	.....	.....	131.60	126.16	121.61	119.09	114.66	115.17	117.88
GROUP 2.										
Baltimore & Ohio	89,831	96.03	90.70	90.22	90.15	92.13	96.30	97.67	97.88	99.50
B., R. & P	17,142	79.71	74.58	70.83	70.69	69.65	70.48	70.44	68.52	69.29
Buffalo & Sus	3,231	33.60	55.98	52.67	50.82	56.63	40.64	46.24	43.67	32.84
Central of N. J	28,859	100.75	100.62	99.96	93.79	95.02	86.95	93.40	91.56	88.57
Central New Eng	1,091	311.18	410.27	416.68	353.30	231.20	202.07	205.59	233.09	229.51
Cumberland & Pa	1,773	.....	.....	34.60	23.55	32.60	17.54	21.38	17.99	27.19
Delaware & Hudson	18,308	106.16	117.41	121.24	116.99	116.15	103.23	101.93	96.41	95.19
Del., Lack. & West	27,812	98.50	96.44	(1)	104.86	107.06	106.38	102.39	98.09	99.04
Erie	54,428	119.70	116.87	114.33	112.93	119.00	118.02	118.54	116.01	114.68
Lehigh Valley	42,789	100.79	101.66	105.52	(1)	107.90	109.35	111.26	112.00	111.30
Long Island	1,239	397.13	473.20	488.38	479.25	438.26	458.34	421.66	375.32	363.60
Montour	3,097	24.05	22.78	28.09	28.73	28.83	23.09	26.60	19.34	22.46
N. Y. C	129,262	118.64	108.62	106.03	111.18	113.28	114.64	113.01	113.93	108.88
N. Y., O. & W	5,654	106.23	103.43	97.17	91.09	106.28	106.48	110.13	110.71	104.09
N. Y., Phila. & Nor	2,119	204.09	.....	154.46	166.30	178.43	169.70	163.80	174.80	221.99
Penna. R. R. (inc. Penna. Company)	255,516	98.11	101.07	98.60	(1)	100.18	100.48	98.43	97.47	96.38
Phila. & Reading	39,673	121.53	127.90	125.04	136.51	130.27	134.49	135.71	140.24	138.64
Union R. R	5,542	149.39	130.28	137.93	155.50	147.52	137.67	162.34	146.48	149.71
Western Maryland	11,512	97.98	.....	110.65	(1)	109.49	114.72	105.84	108.73	84.01
Total	.....	.....	.....	.....	.....	105.92	106.31	105.47	104.88	103.13

GROUP 3.											
Ann Arbor	2,145	136.44	120.73	110.55	100.14	120.13	120.19	110.19	110.58	114.56
B. & L. E	14,879	63.32	54.32	52.02	48.00	52.55	50.13	47.20	51.88	44.67
C., I. & L	6,374	79.78	80.85	82.40	88.77	88.53	87.99	81.69	94.34	89.10
C., H. & D	5,780	174.74	175.08	166.21	165.99	150.06	152.32	159.75	156.66	159.06
Cin., Ind. & W	1,940			77.37	72.84	77.06	73.09	55.67	55.98	76.49
Cin. Northern	1,559	72.79	84.40	83.90	74.57	67.48	78.22	84.67	80.20	78.13
C., C., C. & St. L	29,460	104.45	101.15	93.28	90.79	93.34	88.52	99.77	90.49	102.16
D., T. & I	2,996			105.17	115.66	107.47	100 68	93.76	91.51	93.02
G. R. & I	2,495	180.07	174.18	164.69	162.00	163.88	191.02	181.36	162.16	163.33
Hocking Valley	14,686	85.82	74.22	68.69	83.28	78.94	78.83	67.44	72.45	74.98
L. E. & W	4,632	154.47	146.48	127.74	130.47	116.21	126.32	115.52	116.97	111.03
Mich. Central	28,344	125.88	146.42	137.57	140.65	137.97	139.56	144.95	149.44	141.72
N. Y., C. & St. L	10,573	107.18	121.45	119.67	122.00	132.92	128.23	115.12	127.70	132.56
Penna. Co. (inc. Penna. R. R. group 2)	15,428	134.73	144.63	144.50	137.76	137.37	140.24	144.28	153.40	150.43
Pere Marquette	31,794	84.53	76.09	73.78	74.93	81.79	78.08	75.55	78.63	90.37
Pitts. & L. E	9,085	97.55	86.27	115.07	101.45	104.96	115.66	95.12	79.44	80.62
Tol. & Ohio C	2,906	115.85	122.16	121.34	137.76	120.45	113.21	106.57	105.85	122.14
Tol., St. L. & W	8,520	130.09	146.95	137.76	121.56	126.29	132.78	124.37	127.19	127.85
Vandalia	17,487	125.40		138.06	142.86	148.00	143.58	134.59	134.07	133.41
Wabash	8,408	136.43	146.37	150.54	(1)	143.78	144.81	146.94	144.36	146.18
Wheeling & L. E										
Total				135.87		110.28	110.13	107.78	109.36	111.68
GROUP 4.										
Atl. C. L	27,909	71.32	70.66	74.96	74.77	77.46	80.99	88.30	91.63	91.92
C., C. & O	5,489	52.05	48.13	39.40	44.05	53.47	51.83	50.36	50.88	56.64
C. & W. C	1,056	159.05	161.48	166.64	167.87	180.46	157.95	169.13	125.28	115.15
C. & O	45,613	85.73	75.53	74.07	70.46	74.57	79.20	77.95	79.89	80.16
C. & C	1,924	70.88	66.91	68.52	62.65	59.34	67.00	69.85	67.10	70.83
Nor. Sou	3,072	95.05	112.93	112.31	114.63	122.44	124.34	115.98	118.88	113.68
N. & W	47,374	71.43	70.09	64.25	65.30	65.39	65.23	67.02	67.38	68.24
R., F. & P	758	222.18	235.74	244.53	229.12	210.63	202.90	196.57	211.61	258.05
Seaboard A. L	17,473	98.30	102.05	100.56	101.44	105.47	107.81	109.36	112.19	114.43
Southern	76,418			90.80	88.52	89.91	86.48	86.81	87.85	89.64
C., N. O & T. P.[3]										
Mobile & Ohio.[3]										
Ga. Sou. & Fla.[3]										
Nor. Alabama.[3]										
Virginian	7,907	88.20	77.35	79.12	79.90	82.94	82.55	83.35	82.31	84.11
Total				80.29	79.24	81.45	81.81	82.95	84.17	85.45

[1] Not received.

[2] Not available.

[3] Included in Southern.

Car location statements—Continued.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 5.										
Atl., Birm. & Atl.	3,223	79.13	80.61	(1)	(1)	92.28	93.20	92.35	91.88	96.75
A. & W. P.-W. of Ala.	1,699			76.34	(1)	73.45	75.63	73.87	71.63	60.33
Central of Georgia	9,993	78.05	83.53	80.21	83.60	75.56	84.87	85.37	87.45	84.44
Florida E. Coast	1,657	125.42	151.35	159.02	156.37	169.22	180.14	194.99	191.61	172.54
Georgia R. R.	1,766			94.85	99.66	93.43	92.41	108.32	121.12	97.73
Illinois Central	62,794	80.44	77.33	76.81	77.05	75.69	74.76	73.68	74.17	75.06
Louisv. & Nashv.	45,096	65.04	63.93	62.82	62.80	64.10	63.57	62.23	63.28	67.82
N. O. & N. E.	5,378	50.03	56.03	61.28	65.53	75.88	81.72	84.23	82.69	64.13
N. C. & St. L.	10,614	55.73	65.00	65.22	73.49	74.33	64.94	67.72	64.56	64.36
Total						73.85	73.00	73.13	73.60	73.94
GROUP 6.										
Chicago & Alton	12,947	91.82	94.13	94.90	85.80	87.22	86.67	98.28	96.47	98.55
Chgo. & E. Illinois	24,225	75.03	82.26	70.23	73.66	79.12	86.69	81.33	71.03	78.69
Chgo. & N. West	67,612	94.80	106.59	106.21	104.61	101.23	101.43	99.85	101.69	99.26
Chicago Belt	297			(1)	(1)	971.38	1,355.89	1,683.97	2,080.81	1,518.52
Chgo., Burl. & Quincy	65,533	90.63	92.15	92.21	(1)	92.46	89.94	89.50	90.47	90.80
Chgo. Grt. Western	10,425	95.01	94.58	90.58	(1)	89.29	92.70	98.03	88.15	90.27
C., M. & St. P.	59,510	110.62	98.73	125.48	118.86	115.41	116.10	109.79	109.98	108.34
C., P. & St. L.	1,821	79.45	77.78	79.27	66.90	64.93	72.43	71.61	74.19	68.31
C., R. I. & P.	46,898	95.65	92.77	87.90	(1)	88.49	85.45	88.67	85.32	94.84
C., St. P., M. & O.	12,115	130.11	117.06	115.05	(1)	112.65	101.61	101.61	96.02	102.06
C., T. H. & S. E.	7,064	57.84	48.49	(1)	(1)	44.44	50.16	51.07	52.58	51.80
D., S. S. & A.	2,717	123.94	135.48	115.72	106.95	110.38	106.37	107.12	104.26	111.00
Elgin, Joliet & E.	12,506	140.19	144.77	142.18	142.55	142.87	136.48	135.55	136.03	136.95
Grt. Northern	56,814			94.62	95.38	96.14	87.17	88.11	95.38	93.03
M. & St. L.	7,412	125.73	121.96	112.82	114.52	111.72	111.18	104.09	100.26	100.52
M., St. P. & S. S. M.	22,765	92.25	89.61	82.36	80.95	88.52	87.59	80.00	76.47	74.26
Nor. Pacific	47,358		94.05	96.62	97.36	97.31	98.14	96.73	95.83	95.20
T., P. & W.	1,918	44.67	41.29	(1)	(1)	32.92	32.95	35.61	35.09	36.34
Total						98.78	97.34	97.10	97.14	96.03
GROUP 7.										
St. Jos. & Gr. I.	516	155.70	154.54	146.62	129.70	119.34	144.57	122.67	115.70	104.84
Union Pacific (includes O. S. L. & O-W.)	38,451	88.81	92.38	95.15	94.81	95.67	91.62	89.27	88.70	87.43
Total				96.82	95.15	95.98	92.32	89.71	89.08	87.66

GROUP 8.										
C., R. I. & G. (included in C., R. I. & P., group 6).										
Colo. & Southern	6,268	90.60	90.94	88.95	102.24	97.11	96.11	106.58	108.83	110.16
Denver & Rio Grande	13,323	90.03	88.50	91.54	91.45	92.67	94.03	98.25	102.36	106.34
Kans. City Southern	4,847	106.91	108.41	108.34	95.42	103.57	100.00	107.92	103.24	111.90
K. C., M. & O.	1,733		73.04	66.71	77.55	88.29	84.94	88.06	83.73	73.15
Midland Valley	2,135	83.05		[2]	[2]	85.39	86.60	91.10	85.53	93.82
M., K. & T.	22,642	89.77	95.68	93.29	87.99	91.60	90.09	94.57	102.43	98.59
Missouri Pacific	41,197	103.37	102.50	98.51	97.64	95.50	99.53	102.83	100.90	102.41
St. L. & S. F.	28,790	115.29	112.86	111.81	113.19	113.19	116.32	120.91	123.72	122.86
St. L. S. W.	13,235	45.17	47.84	44.10	43.71	47.31	48.05	50.53	50.34	53.28
Term. of St. Louis	None.			[3]	[3]	[3]	[3]	[4]	[3]	[3]
Total						97.47	96.72	101.47	103.74	103.72
GROUP 9.										
El Paso & S. West	3,882	128.66	107.36	114.14	111.77	118.86	117.41	122.62	114.99	115.48
Fort W. & D. C.	3,861	73.22	83.24	104.74	92.05	87.73	74.77	96.01	82.34	69.02
Gulf Coast Line	2,806					105.06	98.45	111.08	118.60	106.06
N. O., T. & M.[4]										
B., S. L. & W.[4]										
O. & W. N.[4]										
St. L., B. & M.[4]										
Int. & Grt. Northern	5,313	152.03	145.56	163.87	154.09	167.10	158.71	139.71	147.18	126.62
La. Ry. & Nav. Co.	1,237	106.95	108.73	109.54	106.31	110.67	121.26	117.95	116.41	116.25
S. A. & A. P.	1,828	97.33	95.29	91.72	85.84	81.10	105.85	110.83	112.20	93.38
Texas & Pacific	10,951			114.17	116.16	115.79	117.30	118.28	120.87	105.94
Trinity & Brazos Valley	1,625	53.00	56.28	66.40	62.78	58.80	58.65	62.58	55.20	54.65
Total						116.76	117.22	119.15	118.99	103.12
GROUP 10.										
A., T. & S. F.	57,640	99.67	96.87	98.58	97.43	94.31	90.95	95.29	96.15	95.44
A., T. & S. F. C. lines (included in A., T. & S. F.).										
Oregon Short Line (included in Union Pacific).										
O. W. R. R. & Nav. Co. (included in Union Pacific).										
Southern Pacific (inc. Sunset Central)	47,807			97.19	95.35	97.94	100.92	98.84	92.72	92.86
L. A. & S. L.	3,053	98.13	99.11	93.78	93.35	102.20	94.66	105.86	102.46	108.29
Spokane P. & S.	1,054	243.83		[5]	[5]	225.24	185.01	181.59	197.63	[5]
Western Pacific	2,164			[5]	[5]	138.91	140.02	134.29	133.09	130.22
Total						97.68	98.45	99.04	96.53	

[1] Not received. [2] Wired in regard to these figures. Not received. [3] No cars owned. [4] Included in G. C. L. [5] Wired for correct report.

Car location statements—Continued.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 11.										
Canadian Govt. Rys. (Intercolonial)	14,572	115.19	114.83	122.69	129.43	131.88	136.45	137.06	138.45	138.33
Canadian Northern				(1)	(1)	(1)	(2)	(2)	(2)	(1)
Canadian Pacific	84,759	87.96	88.24	88.01	(1)	88.01	88.44	89.14	89.60	90.78
Grand Trunk	42,694	125.53	122.93	117.42	113.37	109.37	113.29	128.21	127.37	126.71
Grand Trunk Pac.	15,510	35.92	37.82	(1)	(1)	35.88	33.36	33.31	32.78	31.57
Total						92.72	94.22	98.65	98.74	99.09

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED.

GROUP 1.										
Bangor & Aroost.	2,687	58.26	60.18	52.65	50.90	50.49	51.51	59.99	61.03	59.06
B. & A.	5,541	106.57	119.17	120.11	123.11	116.01	114.94	108.39	104.87	96.82
B. & M.	13,871	166.34	179.85	181.57	171.06	166.02	158.51	151.28	150.39	150.18
Cent. Vermont	2,082	116.85	104.94	103.90	104.99	105.65	99.48	95.20	88.42	87.94
Maine Central (inc. Portland Term. Co.)	5,050			143.09	146.48	126.78	121.58	121.98	123.35	122.30
N. Y., N. H. & H.	24,705	118.34	130.13	118.42	107.58	100.80	98.53	94.49	99.15	107.50
Rutland	1,627	64.31	75.54	65.57	65.52	63.67	72.87	78.38	75.35	73.19
Total				131.24	124.40	117.58	114.34	110.47	111.78	114.36
GROUP 2.										
B. & O.	29,412	125.18	124.74	123.54	123.72	124.09	129.33	135.69	135.80	138.62
B. R. & P.	2,973	95.34	84.78	78.50	82.06	81.79	84.82	90.12	89.61	80.46
Buff. & Susq.	483	40.82	40.00	41.44	(1)	38.35	39.79	35.67	34.64	27.84
Cent. R. R. of N. J.	8,868	138.02	127.82	136.37	128.56	136.90	116.99	117.11	112.38	114.26
Cent. N. England	998	196.19	289.77	270.54	168.44	97.39	73.35	77.53	77.03	71.72
Cumb. & Penna.	5			1,840.00	1,960.00	1,820.00	1,660.00	1,900.00	1,320.00	1,660.00
D. & H.	4,895	167.79	149.10	(2)	(2)	154.65	(2)	(2)	(2)	(2)
D., L. & W.	15,317	99.60	102.03	(1)	111.42	111.27	105.83	97.04	92.88	91.85
Erie	20,471	127.91	123.49	117.77	110.58	121.65	122.47	123.88	121.64	119.11
Lehigh Valley	19,716	100.45	105.85	110.24	(1)	118.19	125.18	128.11	127.83	126.60
Long Island	524	691.28	710.12	690.97	633.15	644.75	695.40	673.30	565.38	484.54
Montour	None.			(1)	(2)	(2)	(2)	(2)	(2)	(2)
N. Y. C.	59,040	130.30	116.55	116.07	121.01	132.63	135.91	130.83	127.24	121.46
N. Y., O. & W.	3,333	185.46	211.58	214.80	210.71	215.85	202.19	214.54	185.66	172.79
N. Y., P. & N.	1,959			119.05	131.28	141.08	140.07	136.11	148.10	184.31

42 I. C. C.

Penna R. R. (inc. Penna. Co.)	75,324	135.86	140.80	138.73	(1)	140.09	141.02	135.25	134.33	130.21
P. & R.	9,405	166.77	163.94	157.59	159.22	172.88	187.39	175.58	170.40	175.17
Union R. R.	11	3,645.45	2,409.09	3,781.82	3,890.91	3,927.27	3,172.73	3,163.64	3,072.73	2,909.09
Western Maryland	1,296	314.86		438.57	(1)	427.15	405.48	346.45	348.61	261.11
Total						134.70	134.77	132.20	130.05	125.75
GROUP 3.										
Ann Arbor	1,151	129.64	113.93	97.07	91.29	111.40	117.65	100.40	106.08	115.38
Bessemer & Lake E.	1,249	47.66	48.85	55.82	58.12	61.80	56.99	59.84	44.84	52.04
C., I. & L.	2,519	89.37	86.14	82.21	70.58	84.48	84.04	78.01	92.30	89.96
C., H. & D.	3,177	142.68	141.43	129.14	127.26	121.47	116.51	124.18	129.80	134.20
Cin., Ind. & West	1,705			47.87	44.34	40.03	38.54	31.97	30.20	45.67
Cin. Northern	1,467	44.76	42.92	54.12	47.10	51.78	33.51	41.04	32.90	38.31
C., C., C. & St. L.	16,035	79.44	91.19	86.16	83.04	78.32	70.85	81.62	78.55	84.71
D., T. & I.	1,403			69.58	(1)	66.96	65.56	63.46	53.17	64.36
G., R. & I.	1,653			128.80	125.77	139.75	135.78	130.20	118.95	113.03
Hocking Valley	3,064	79.93	68.95	(2)	(2)	79.28	67.01	74.52	84.70	84.95
L. E. & W.	4,397	92.81	85.98	75.13	80.73	66.98	72.36	64.44	71.02	71.30
Michigan Central	20,580	93.10	97.25	109.67	113.84	108.24	115.59	125.53	129.14	116.60
N. Y., C. & St. L.	6,412			117.78	121.98	135.96	126.70	113.86	137.12	144.00
Penna. Co. (inc. in Pa. R. R., group 2)	10,942			121.72	119.31	119.86	117.38	123.17	131.52	130.52
Pere Marquette	5,887	97.27	75.23	82.79	79.01	81.80	87.54	95.52	94.04	122.07
P. & L. E.	1,246	142.46	116.84	144.59	114.11	118.94	162.23	136.12	153.93	138.76
T. & O. C.	2,138		90.69	88.69	79.56	91.91	80.91	79.74	79.31	99.71
T., St. L. & W.	2,755	179.87	177.28	189.66	169.30	147.34	141.14	135.21	129.18	136.15
Vandalia	10,220	136.12		129.60	140.01	145.17	140.49	147.25	138.72	154.02
Wabash	901	292.34	280.91	288.79	(2)	305.44	291.34	351.39	331.63	330.74
W. & L. E.										
Total						106.82	104.46	107.91	111.02	114.19
GROUP 4.										
Atl. Coast Line	20,928	65.85	66.15	72.00	71.29	75.27	79.99	90.69	93.32	93.81
C., C. & O.	1,231	74.72	73.95	62.97	68.57	69.29	72.29	71.08	76.69	86.19
C. & W. C.	730	159.56	152.91	155.76	163.50	175.31	154.92	153.52	123.44	111.49
C. & O.	6,904	198.12	198.49	146.91	141.92	144.69	181.38	183.49	176.23	174.03
Coal & Coke	447	103.11	91.53	99.76	83.74	86.64	91.50	89.04	81.43	80.31
Nor. Southern	2,297	80.06	95.84	93.66	97.57	109.64	111.93	101.87	101.52	97.00
R., F. & P.	337	379.90	379.55	426.87	376.58	371.75	341.25	335.01	360.83	441.84
N. & W.	8,022	123.67	117.33	90.86	117.30	119.02	110.03	124.88	121.63	121.22
Seaboard Air Line	10,382	94.00	99.52	98.38	99.33	103.66	108.06	112.43	117.70	121.53
Southern Ry.	42,325			101.86	100.64	98.77	92.29	91.40	91.44	95.70
C., N. O. & T. P.[5]										
Mobile & Ohio[5]										
Ga. Sou. & Fla.[5]										
No. Ala.[5]										
Virginian	548	184.89	142.19	114.12	121.16	118.97	108.03	108.58	96.35	104.56
Total				101.57	99.86	101.71	100.71	104.25	104.67	107.18

[1] Not received.
[2] Not received. Wired for report.
[3] Not available.
[4] No cars owned.
[5] Included in Southern.

Car location statements—Continued.

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 5.										
A. B. & A.	1,507					114.78	115.59	109.48	108.02	(1)
A. & W. P.-W. Ry. of Ala.	967			108.27	(1)	103.52	92.76	93.59	86.87	70.22
Cent. of Ga.	6,700	74.35	73.72	74.41	81.15	82.39	80.66	80.93	83.20	81.90
Florida E. Coast.	1,049		125.35	136.22	140.99	142.04	161.96	176.64	173.31	142.71
Georgia R. R.	1,169			103.42	111.21	104.79	106.50	112.75	140.29	112.23
Ill. Central.	28,684	81.53	72.34	76.70	77.44	69.48	65.18	63.84	64.28	65.14
L. & N.	18,182	64.45	67.17	60.68	65.47	66.00	65.17	64.72	65.81	72.39
N. O. & N. E.	3,652	43.20	50.81	53.55	52.39	58.43	64.40	64.76	64.29	53.01
N. C. & St. L.	7,244	39.38	42.89	43.33	50.04	45.59	53.74	51.42	46.22	48.61
Total						69.07	69.28	68.48	68.89	
GROUP 6.										
C. & A.	5,107	92.58	98.82	91.87	80.94	88.38	83.53	94.95	92.72	97.77
C. & E. I.	6,253	82.61	96.82	79.07	89.74	89.61	94.24	85.46	72.24	83.11
C. & N. W.	37,603	98.72	98.53	91.49	89.06	85.92	84.39	82.93	87.98	88.55
Chgo. Belt.	41			(1)	(1)	3,614.63	4,675.61	5,860.98	7,217.07	5,790.24
C. B. & Q.	30,396	86.50	89.31	82.41	(1)	79.98	77.46	77.24	77.47	79.86
C. G. W.	7,221		75.05	80.01	(1)	74.41	75.57	82.16	71.78	74.42
C., M. & St. P.	41,581			(2)	(2)	(2)	96.86	87.38	87.82	85.51
C., P. & St. L.	738			67.02	66.22	68.48	84.56	83.38	82.06	77.25
C., R. I. & P.	31,979	86.66	82.38	72.25	(2)	68.51	69.92	73.05	69.61	78.51
C., St. P., M. & O.	8,713	131.69	112.69	96.30	(1)	95.20	93.16	86.71	83.11	87.82
C., T. H. & S. E.	197	172.13	150.24	(1)	(1)	140.80	141.62	136.55	126.40	131.47
D., S. S. & A.	793		174.82	138.24	121.46	131.65	121.70	134.65	126.62	139.97
E. J. & E.	1,072	369.05	161.22	(3)	(2)	228.30	250.93	322.85	243.47	239.55
Grt. Northern.	33,911			87.31	87.34	89.27	88.31	85.82	87.34	85.42
M. & St. L.	5,431	91.35	79.70	84.09	85.07	84.86	88.86	85.60	78.73	79.62
M., St. P. & S. S. M.	18,208	79.75	74.65	75.19	73.50	69.32	70.34	65.26	63.07	62.63
No. Pacific.	26,284		94.42	96.58	97.75	95.65	95.92	95.32	93.73	91.50
T. P. & W.	1,457	34.33	38.85	(1)	(1)	20.86	19.77	24.23	23.34	21.76
Total						87.57	86.69	85.67	84.98	84.54
GROUP 7.										
St. J. & Grand Is.	340	110.29	86.47	94.11	81.18	65.41	87.94	64.41	59.41	68.82
U. P. (inc. O. S. L.-O.-W.).	22,274	75.09	72.10	75.99	75.42	73.59	70.79	67.49	67.22	65.43
Total				76.31	73.53	73.47	71.04	67.44	67.10	65.48

GROUP 8.										
C., R. I. & G. (included in C., R. I. & P. group 6).										
Colo. & Southern	2,425	63.69	45.48	45.43	(2)	51.77	50.85	60.74	67.39	72.25
D. & R. G.	4,757	93.11	88.99	72.54	72.67	73.69	77.22	77.27	77.15	87.64
Kansas City Southern	2,644	115.20	120.53	116.49	94.89	112.04	113.40	118.89	112.82	108.89
K., C., M. & O.	1,006		71.29	63.52	76.14	88.77	86.98	95.73	92.99	83.09
Midland Valley	427	112.29		(2)	(2)	125.53	139.34	134.89	135.60	140.21
M., K. & T.	13,528	86.29	93.21	105.87	93.88	91.95	89.74	96.75	100.72	96.97
Missouri Pacific	22,682	91.71	90.22	88.73	83.61	82.48	84.60	86.56	85.62	86.12
St. L. & S. F.	14,119	94.79	90.01	93.38	93.77	93.82	94.79	99.43	103.77	105.86
St. L., S. W.	10,521	34.91	34.54	31.46	31.57	36.68	36.16	38.38	38.88	42.20
Term. R. R. of St. L.	None.	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Total						83.76	82.07	81.77	89.90	88.20
GROUP 9.										
El Paso & S. W.	673	266.41	180.98	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Ft. W. & D. C.	2,644	61.21	65.05	94.49	79.07	77.57	68.72	83.17	69.48	75.19
Gulf Coast Lines	1,497					116.10	105.08	115.03	115.97	109.69
N. O., T. & M.[4]										
B., St. L. & W.[4]										
O. & W. N.[4]										
St. L., B. & M.[4]										
Int. Grt. Northern	2,512	209.49	204.69	223.43	218.66	234.15	204.76	204.37	223.17	190.77
La. Ry. & Nav. Co.	917			80.96	78.99	(3)	68.77	88.55	82.99	83.21
St. L. S. F. of T.										
S. A. & A. P.	1,702	65.43	76.11	80.99	74.18	69.42	69.38	70.62	71.45	55.11
T. & P.	79,377			99.35	93.81	97.78	96.99	99.60	103.60	93.20
T. & B. Valley	1,200	44.38	51.76	60.75	56.76	52.38	52.40	58.58	53.17	55.71
Total						108.06	103.96	106.65	105.81	96.16
GROUP 10.										
A., T. & S. F.	31,429	90.42	84.47	90.67	88.68	85.32	85.35	84.83	87.70	87.77
A., T. & S. F. Coast Lines (included in A., T. & S. F.).										
O. S. L. (included in Union Pacific).										
O. W. R. R. & N. (included in Union Pacific).										
Southern Pacific (inc. Sunset Central)	26,826	84.60	80.13	(2)	(2)	82.61	89.00	87.59	82.02	84.26
L. A. & S. L.	1,240	84.83	85.37	74.55	75.68	87.80	91.77	91.77	86.69	91.85
Spokane P. & S.	582			(5)	(5)	237.97	196.39	180.76	202.58	(5)
West. Pacific	1,000			(5)	(5)	122.40	122.20	117.60	121.60	139.60
Total						84.28	86.62			

[1] Not received. [2] Not available. [3] No cars owned. [4] Included in G. C. L. [5] Wired for correct figures.

Car location statements—Continued.

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP II.										
Canadian Govt. Rys. (intercolonial)	9,803	.....	.....	101.49	108.69	113.23	117.33	118.69	120.69	120.22
Canadian Northern	.....	.....	.....	(1)	(1)	(2)	(2)	(2)	(2)	(2)
Canadian Pacific	66,090	86.50	86.49	82.91	(1)	82.16	83.34	84.28	84.77	85.68
Grand Trunk	29,258	111.53	108.94	106.39	101.36	95.70	100.58	120.07	117.82	116.94
Grand Trunk Pacific	11,978	34.17	35.87	(2)	(1)	33.36	29.86	29.98	28.79	27.02
Total	.....	.....	.....	.....	.....	83.15	85.01	.....	.....	.....

1 Not received. 2 Not received; wired for report. 3 Not available.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED.

	Cars owned.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 1.								
Bangor & Aroostook	None.	None.	None.	None.	None.	None.	None.	None.
B. & A.	1,755	151.82	143.40	132.84	159.89	161.77	155.21	161.94
B. & M.	7,668	134.94	121.62	119.55	120.37	129.49	133.93	133.84
Cent. Vermont	206	208.74	199.02	188.34	222.82	182.52	167.96	160.19
Maine Central (including Portland Term. Co.)	1,451	123.24	127.07	119.81	116.66	105.48	113.94	118.68
N. Y., N. H. & H.	7,849	140.87	148.81	156.96	151.51	134.83	122.94	135.53
Rutland	559	84.39	93.87	66.80	104.83	95.89	112.70	87.66
Total	.....	137.32	134.83	135.30	136.62	132.47	129.92	134.91
GROUP 2.								
B. & O.	56,790	70.09	69.94	73.23	76.69	77.59	77.48	78.37
B., R. & P.	14,145	68.79	67.80	66.78	66.93	65.71	63.49	66.44
B. & S.	2,746	55.21	(1)	59.55	38.21	46.27	43.41	32.19
Cent. R. R. of N. J.	17,356	81.38	76.47	73.72	71.89	81.29	81.63	75.49
Cent. N. E.	42	2,975.86	3,505.17	2,408.62	2,165.52	2,985.71	3,650.00	3,750.00
C. & P.	1,768	29.07	17.76	27.55	13.18	16.06	14.31	22.51
D. & H.	12,624	(2)	(2)	(2)	(2)	(2)	(2)	(2)
D., L. & W.	11,748	98.00	(1)	101.08	100.52	101.28	98.64	98.97

42 I. C. C.

Erie	23,566	117.03	115.35	120.16	119.02	118.35	115.40	115.13
Lehigh Valley	21,566	101.46	(1)	102.15	97.75	98.12	98.98	97.40
Long Island	715	396.23	361.42	283.61	281.33	232.61	229.67	259.58
N. Y. C.	56,455	98.71	108.75	98.20	99.11	100.12	103.96	102.78
Montour	3,067	24.95	25.85	28.89	21.95	25.64	18.56	21.48
N. Y., O. & W.	4,657	83.53	75.84	78.72	81.23	82.50	88.40	82.93
N. Y., P. & N.	150	441.33	446.00	478.00	430.00	436.67	494.00	648.67
Penna. R. R. (inc. Penna. Co.)	164,077	81.10	(2)	82.28	82.61	82.38	81.16	81.36
P. & R.	29,373	113.78	118.93	114.26	116.15	122.11	129.25	125.71
Union R. R.	5,093	121.00	143.43	130.32	123.87	147.85	143.32	149.52
Western Md.	10,117	66.83	(1)	67.06	60.04	73.50	76.04	59.76
Total				88.82	89.21	90.30	90.57	88.77
GROUP 3.								
Ann Arbor	674	144.59	126.93	142.52	132.15	142.52	140.21	142.96
B. & L. E.	13,466	50.69	45.96	50.87	48.79	45.41	51.96	43.28
C., I. & L.	2,702	93.15	104.63	104.70	110.58	97.56	113.02	104.89
Cin., Ham. & Dayton	2,319	186.11	187.97	167.65	181.18	192.66	179.00	178.80
Cin., Indpls. & West	114	400.88	385.96	399.12	360.53	266.67	285.09	410.53
Cin. Northern	78	947.44	839.74	653.85	852.56	839.75	935.90	773.08
C., C., C. & St. L.	10,970	100.60	100.20	117.82	112.96	122.66	106.44	127.08
Detroit, Tol. & I.	1,493	127.66	(1)	136.14	125.16	112.22	115.97	110.01
Grand Rapids & Ind.	733	284.99	274.22	235.88	244.88	226.33	191.13	204.64
Hocking Valley	11,573	(1)	(1)	78.69	82.08	65.66	69.11	72.26
L. E. & Western	3	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Michigan Central	4,626	260.85	260.05	266.88	251.75	246.09	260.46	267.96
N. Y. C. & St. L.	3,829	110.89	106.40	108.01	113.14	99.84	94.28	96.84
Penna. Co. (inc. Penna. R. R., group 2)	3,355	213.44	189.51	186.11	198.61	213.80	199.97	194.58
Pere Marquette	25,848	70.61	72.80	78.55	74.93	70.22	74.22	81.95
Pitts. & L. Erie	7,754	105.85	97.00	85.76	103.12	95.12	85.59	69.47
Tol. & Ohio Cent.	517	237.91	206.38	254.93	239.07	213.54	213.73	209.48
Tol., St. L. & West	5,094	98.49	82.49	101.79	117.57	108.72	109.85	108.64
Vandalia	5,455	152.46	185.61	145.47	142.23	122.58	119.86	119.99
Wabash	7,285	131.81	(4)	122.65	125.57	121.12	120.29	122.72
Wheeling & L. E.								
Total				107.93	109.65	103.14	103.18	105.08
GROUP 4.								
Atlantic C. L.	635	237.32	226.46	219.21	228.66	224.09	263.31	225.35
C., C. & O.	4,068	35.28	40.46	46.53	43.83	42.67	41.72	46.34
C. & W. C.	99	453.54	406.67	472.73	420.20	523.23	311.11	283.84
C. & O.	36,781	53.55	49.98	54.66	59.80	57.53	60.81	60.55
C. & O.	1,477	33.18	25.80	22.28	28.03	25.46	24.58	27.98
Nor. Southern	152	410.71	577.38	573.81	340.13	357.89	410.53	417.11
Nor. & Western	36,164	50.98	52.28	52.55	53.86	53.22	54.55	55.91

[1] Not received. [2] Not available. [3] Own but 3 cars; 1,490 foreign cars on line Jan. 1, 1917. [4] Not received. Wired for report.

Car location statements—Continued.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 4—continued.								
R., F. & P.	405	92.83	104.44	69.51	64.44	71.11	75.80	85.43
Seaboard A. L.	4,014	109.89	112.43	118.15	114.24	111.93	102.04	103.71
Southern	27,654	74.89	68.55	73.43	74.51	76.51	79.08	77.28
C., N. O. & T. P.[1]								
Mobile & Ohio.[1]								
Ga. Sou. & Fla.[1]								
No. Alabama.[1]								
Virginian	6,326	86.23	86.28	90.00	89.03	90.10	89.74	91.59
Total	.....	62.17	60.25	63.43	65.44	65.00	66.72	66.83
GROUP 5.								
Atl., Birm & Atl.	962	(2)	(2)	96.11	100.21	110.95	110.32	111.64
A. & W. P.-W. Ry. of Ala.	401	34.91	(2)	30.67	53.62	56.72	47.26	51.49
Central of Georgia	2,443	94.96	93.53	93.86	92.60	96.86	90.76	93.04
Florida E. Coast	159	425.00	401.26	410.00	394.97	403.77	427.67	415.72
Georgia R. R.	338	79.29	78.79	78.99	74.26	130.77	93.20	79.59
Illinois Central	25,051	70.45	71.36	75.68	79.45	77.95	79.48	80.97
Louisv. & Nashville	20,663	60.49	63.05	65.49	61.44	60.18	60.97	63.72
N. O. & N. E.	1,018	85.77	108.24	138.47	141.12	150.93	144.85	95.97
N. C. & St. L.	2,239	93.31	101.47	94.47	84.66	89.12	93.58	91.20
Total	.....	.....	.....	75.22	75.05	75.50	76.09	76.37
GROUP 6.								
Chicago & Alton	5,359	105.36	98.45	94.96	95.99	107.74	108.66	107.71
Chgo. & E. Illinois	16,978	64.39	65.02	71.56	78.76	76.55	69.44	76.48
Chgo. & N. West	12,459	142.46	143.31	128.68	143.55	141.46	146.84	143.65
Chicago Belt	248	(5)	(5)	439.92	609.27	741.53	906.05	765.73
Chgo., Burl. & Q.	22,914	102.03	(2)	104.15	99.01	99.13	99.91	99.81
Chgo. Great West	1,593	146.89	(2)	144.01	162.46	179.66	160.64	159.70
C., M. & St. P.	5,895	(2)	(2)	(2)	(2)	187.02	186.15	186.33
C., P. & St. L.	1,024	71.97	62.79	57.32	61.62	59.08	63.57	56.25
C., R. I. & P.	6,610	157.56	(2)	149.71	148.89	154.95	148.68	164.43
C., St. P., M. & O.	1,756	125.20	(3)	131.80	124.41	125.77	134.19	112.07
C., T. H. & S. E.	5,788	(2)	(2)	45.65	52.36	53.17	49.21	53.98
D., S. S. & A.	1,331	101.62	94.92	95.07	92.05	87.19	85.42	90.61
Elgin, Joliet & E.	11,118	(3)	(2)	114.27	108.31	102.43	109.07	108.62
Great Northern	2,012	179.47	174.45	172.42	173.46	162.43	174.45	165.81

42 I. C. C.

Minn. & St. L.	1,256	217.44	219.75	208.12	187.26	164.97	157.01	157.01
M., St. P. & S. S. M.	845	264.86	272.10	221.39	152.36	148.05	148.28	151.60
Northern Pacific	6,228	125.83	125.81	126.23	129.35	129.94	127.34	131.36
Tol., Peoria & W	360	(2)	(2)	70.83	72.22	76.11	71.67	86.11
Total				113.50	111.20	114.29	117.36	114.28
GROUP 7.								
St. J. & Gr. I.	89	310.11	241.57	229.21	285.39	251.69	223.59	158.43
Union Pac. (inc. O. S. L. & O. W.)	6,054	131.23	132.43	162.11	153.83	151.55	152.97	151.40
Total		133.42	133.76	163.08	155.74	153.00	154.00	151.51
GROUP 8.								
C., R. I. & G. (included in C., R. I. & P. group 6).								
Col. & Southern	2,145	(2)	(2)	151.89	152.54	158.28	158.04	155.66
Den. & Rio Grande	6,129	88.35	87.45	88.77	89.32	97.16	104.44	103.23
Kans. City Southern	1,721	96.18	94.74	92.30	81.85	95.16	91.76	98.14
K. C., M. & O.	239	74.48	83.26	92.05	89.96	85.27	73.64	66.53
Midland Valley	1,585	(4)	(4)	69.02	65.99	72.81	65.99	76.03
M., K. & T.	5,756	89.09	93.65	91.27	87.11	99.97	93.41	104.12
Missouri Pacific	13,367	108.46	104.75	104.01	112.82	118.21	115.49	118.41
St. L. & S. F.	10,131	.....	120.59	120.70	123.80	126.58	127.70	126.81
St. L. S. W.	930	153.07	145.03	143.22	145.16	146.66	133.87	134.84
Term. R. R. of St. L.	None.	(6)	(6)	(5)	(5)	(5)	(5)	(5)
Total				108.11	110.26	115.18	113.78	117.72
GROUP 9.								
El Paso & S. W.	2,517	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Ft. W. & D. C.	347	264.53	248.77	135.43	147.84	181.27	158.20	102.02
Gulf Coast Line	300	.....	.....	213.67	206.33	229.00	236.00	180.67
N. O., T. & M.[7]								
B., S. L. & W.[7]								
O. & W. N.[7]								
St. L., B. & M.[7]								
Int. & Grt. Northern	909	109.02	94.72	112.51	105.50	97.14	92.30	73.16
La. Ry. & Nav. Co.	125	160.00	158.40	(2)	149.60	156.80	165.60	148.00
St. L., S. F. & T.								
S. A. & A. P.	75	431.17	407.79	329.87	364.94	308.00	310.67	256.00
Tex. & Pacific	1,364	196.33	204.91	196.11	194.79	187.10	184.68	168.40
Trinity & B. V.	85	70.59	81.18	92.84	91.76	114.12	68.24	71.76
Total				135.48	136.46	136.18	140.30	111.53

[1] Included in Southern.
[2] Not available.
[3] Not received. Wired for report.
[4] Wired in regard to these figures.
[5] Not received.
[6] No cars owned.
[7] Included in G. C. L.

Car location statements—Continued.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 10.								
A., T. & S. F.	9,530	136.74	136.86	132.01	130.65	131.40	127.95	125.06
A., T. & S. F. Coast Line (included in A., T. & S. F.).								
Oregon Short Line, O. W. R. R. & Nav. Co. (included in Union Pacific).								
Southern Pacific (inc. Sunset Central)	3,334	(1)	(1)	212.43	211.70	214.76	190.49	173.70
L. A. & S. L.	743	137.68	137.80	161.91	124.63	160.06	149.93	164.47
Spokane, Port. & S.	None.	(2)	(2)	None.	None.	None.	None.	(3)
Western Pacific	125	577.35	582.67	478.00	489.00	391.00	240.80	182.40
Total				154.79	152.41	155.29	146.40	
GROUP 11.								
Canadian Govt. Rys. (intercolonial)	1,203	182.96	205.40	204.74	225.85	227.51	228.04	225.44
Canadian Northern	2,772	(2)	(2)	(4)	(4)	(4)	(4)	(4)
Canadian Pacific	3,809	(2)	(2)	181.94	169.44	173.41	171.72	170.39
Grand Trunk	6,969	170.28	166.77	166.68	161.23	172.46	175.74	175.03
Grand Trunk Pac.	1,652	(2)	(2)	53.45	55.21	55.08	54.24	55.02
Total				160.58	156.37	162.88	164.54	163.64

[1] Not available. [2] Wired for correct figures. [3] Not received. [4] Not received. Wired for report.

Exhibit C.

CIRCULAR NO. 3, AMENDING AND INTERPRETING CIRCULAR NO. 1762.

The arrangement made for redistribution of box cars in American Railway Association circular No. 1762, is amended and interpreted as follows:

1. The request to deliver to southern and western connections an excess above box cars received is effective regardless of the distribution of open cars, as under American Railway Association circular No. 1750, the open car equipment is being returned to owners. Roads having either an excess or deficiency in open car equipment are, therefore, expected to comply with request made as to box cars.

2. All railways having in their possession more than their ownership of box cars are required to deliver the specified excess of box cars to southern and western connections regardless of their receipts from northern and eastern connections. Whenever roads in group 4 not covered by American Railway Association circular No. 1762 are in possession of their ownership of box cars they are expected to help their western and southern connections which have deficiencies by delivering to them a 20 per cent excess of box cars above the number received.

3. Roads having in their possession less than their ownership of box cars should deliver to southern and western connections the required excess of box cars above those received when they are receiving from northern and eastern connections the specified percentage of excess. When they are receiving from such northern and eastern connections less than the specified percentage of excess, they are required to deliver to southern and western connections a percentage of box cars above those received equal to the percentage of excess received from their northern and eastern connections. When the northern and eastern connections of such lines are not giving them a substantial excess of box cars above those delivered such deficiency lines should actively solicit such excess deliveries from their connections, and failing to obtain them, should immediately advise the commission on car service.

4. It is not contemplated that intermediate or other railways having a deficiency of box car equipment compared with ownership should retain possession of all box cars received from northern and eastern connections, until their own deficiency is eliminated, but such lines should concurrently, with the receipt of the excess box cars from northern and eastern connections, deliver the specified percentage of excess to their southern and western connections. It is believed, as the interchange with northern and eastern connections have been in excess of those of southern and western connections, that observance of this rule will permit intermediate roads deficient in box car equipment to retain a fair proportion of the box cars received and in turn help their southern and western connections, which may also be deficient in box car equipment, with a substantial part of the box car equipment now being redistributed from eastern territory. The observance of this rule is extremely important, as otherwise roads in the far southern and western territories will be seriously discriminated against, as these lines are being obliged to release open car equipment now being used for box car traffic.

5. The commission on car service renews its advice that embargoes are a necessary part of the machinery to accomplish the purpose of this circular.

EXHIBIT D.

CIRCULAR No. 5

THE AMERICAN RAILWAY ASSOCIATION

THE COMMISSION ON CAR SERVICE

FAIRFAX HARRISON, CHAIRMAN.
W. L. PARK,
E. J. PEARSON,
C. M. SHEAFFER,
W. A. WORTHINGTON.

GEORGE HODGES, SECRETARY.

KELLOGG BUILDING

WASHINGTON, D. C., *December 18, 1916.*

To All Members of the American Railway Association:

The Commission on Car Service, sitting in Washington in daily consultation with the Interstate Commerce Commission, in an effort to relieve the car shortage existing in certain parts of the country, has made four important requests upon the railroads.

These requests, enumerated below, were formulated in the interest of the public as a whole, and with the knowledge that some roads would be compelled to make sacrifices to comply with them. It was thought, however, that it was absolutely necessary that the railroads themselves should take drastic action, if they were to make any progress in relieving the situation.

The requests issued by the Commission on Car Service as instructions to all railroads of the country follow:

1. Request of November 23, 1916, that all railways should at once return to car owners all open top freight cars, either loaded or empty.

2. Request of November 29, 1916, that all railways which had on their lines more box cars than they owned should, regardless of local requirements, immediately move such excess of cars, loaded or empty, toward the railroads which have less than their ownership of cars. A statement of car location as of November 1st was published at that time.

3. Request of December 1, 1916, that railways should deliver to their western and southern connections certain designated percentages of box cars either loaded or empty, in excess of the number received from those connections.

4. Under date of November 25th, a circular was issued, requesting all Railroads to send location statements of foreign and system cars on their line, making certain separation reports to be made as of the 1st, 8th, 15th and 23rd of each month.

These requests have met with generous and prompt response on the part of a number of roads, but some of the lines have shown much less progress in complying with them than they should; this is shown by the reports received to date by the Commission on Car Service. In general, the excess of open top equipment is located on western lines and the excess of box cars on eastern lines. It is apparent that both classes of lines have been reluctant to return the kind of equipment of which they have an excess unless their deficiencies in other equipment are at the same time relieved. It is equally apparent that if both classes of roads will give their full co-operation in complying with the request of the Commission on Car Service all lines will be mutually benefited.

The Commission is strongly of the view that if any road does not fully and promptly support the program outlined with respect to both open top and box cars such road places itself unfairly in a position of advantage as compared with other railways in the

same territory complying with the instructions of the Commission on Car Service. For this reason the Commission on Car Service now makes such deductions as are possible from the reports received, and draws attention to the lines which apparently are not doing everything possible to return excess equipment to deficiency lines, in the hope that these lines will at once show a marked improvement in their performance.

OPEN TOP EQUIPMENT.

The only statistics available to the Commission on Car Service from which may be deduced the effect of the request to return open top cars to owners are the "Percentage of gondola, coal and coke cars on line to total owned," as reported by the various roads. In studying these figures it must be remembered that roads receiving and not originating coal shipments have on their lines in normal times an excess over cars owned, while roads originating coal traffic normally hold less than their ownership. Regardless of this condition roads having an excess of coal car equipment should have materially reduced such excess following the request of November 23 made by the Commission on Car Service. Comparing the reports of December 8 with those of December 1st, November 23rd and November 15th, the following lines, having an excess above ownership, have not shown the desired improvement in percentage of coal cars on line to total owned:

Road	*Nov. 15*	*Nov. 23*	*Dec. 1*	*Dec. 8*
Group 1.				
Boston & Albany	151.82	143.40	132.84	159.89
Central Vermont	208.74	199.02	188.34	222.82
New York, New Haven & Hartford	140.87	148.81	156.96	151.51
Rutland Railroad	84.39	93.87	86.80	104.83
Group 2.				
Erie	117.03	115.35	120.16	119.02
New York Central	110.76	118.40	110.18	111.15
Philadelphia & Reading	113.78	118.93	114.26	116.15
Group 3.				
Ann Arbor	144.59	125.93	142.52	132.15
Chicago, Indianapolis & Louisville	93.15	104.63		110.58
Cincinnati, Hamilton & Dayton	186.11	187.97	167.65	181.18
Cleveland, Cincinnati, Chicago & St. Louis	100.60	100.20	113.27	112.96
New York, Chicago & St. Louis	110.89	106.40	108.01	113.14
Pere Marquette	213.44	189.51	186.11	198.61
Wheeling & Lake Erie	131.81		122.65	125.57
Group 4.				
Atlantic Coast Line	237.32	226.46	219.21	228.66
Seaboard Air Line	100.89	112.43	118.15	114.24
Group 5.				
New Orleans & Northeastern	85.77	108.24	138.47	141.12
Group 6.				
Chicago Great Western	146.89		144.01	178.48
Great Northern	179.47	174.45	172.42	173.46
Group 7.				
Union Pacific (Inc. O. S. L. and O. W.)	131.23	132.43	136.59	129.62
Group 8.				
Missouri Pacific	108.46	104.75	104.01	112.82
St. Louis Southwestern	153.07	145.03	143.22	145.16
Group 9.				
Fort Worth & Denver City	264.53	248.77	228.08	252.71
Texas & Pacific	196.33	204.91	196.11	194.79
Group 10.				
Southern Pacific (Inc. Sunset-Central)			212.43	211.70
Western Pacific	577.33	582.67	637.33	652.00
Group 11.				
Canadian Govt. Rys. (Intercolonial)	182.96	205.40	204.74	225.85
Grand Trunk	170.28	166.77	166.68	161.23

BOX CARS.

The location statistics of box cars available to the Commission on Car Service are supplemented by reports of box cars interchanged with northern and eastern and with southern and western connections. These interchange reports of box cars for the first eight days in December are overdue in the case of all railways excepting the following and attention is especially drawn to the negligence in this respect of all other lines. In listing the roads sending these reports the percentage of box cars on line to total owned, according to their last report, is given for each line, as well as the percentage of box cars delivered to southern and western connections in excess of those received:

Road.	Per Cent of Box Cars on Line to Total Owned Dec. 8th.	Excess of Deliveries, Per Cent.
Group 1.		
Boston & Albany	114.94	—5.58*
Boston & Maine	158.51	37.21
Central Vermont	99.48	3.06
Maine Central	121.58	6.70
New York, New Haven & Hartford	98.53	24.99
Rutland	72.87	24.67
Group 2.		
Central Railroad of New Jersey	116.99	11.55
Lehigh Valley	125.18	—14.35*
New York Central	133.91	4.07
Central New England	75.35	17.18
Delaware, Lackawanna & Western	105.83	20.48
Pennsylvania (Inc. Penna. Co.)	141.02	16.66
Philadelphia & Reading	187.39	1.10
Western Maryland	405.48	97.36
Union R. R.	.....	18.32
Group 3.		
Michigan Central	115.59	4.25
Wabash	140.49	2.74
Toledo & Ohio Central	162.23	—5.89*
Lake Erie & Western	72.36	—13.14*
Pittsburgh & Lake Erie	87.54	19.19
Vandalia	141.14	10.48
Group 4.		
Carolina, Clinchfield & Ohio Ry	72.79	63.68
Coal & Coke	91.50	.....
Southern	92.29	13.07
Group 5.		
Atlanta & West Point	92.76	20.17
Central of Georgia	80.66	6.30
Illinois Central	65.18	4.11
Nashville, Chattanooga & St. Louis	53.74	7.13
Group 6.		
Chicago & Alton	83.53	—2.71*
Chicago & Eastern Illinois	83.51	—11.89*
Chicago, Burlington & Quincy	77.46	3.40
Chicago, St. Paul, Minneapolis & Omaha	93.16	2.30
Northern Pacific	95.92	13.56
Toledo, Peoria & Western	84.92	30.28
Group 7.		
Union Pacific (Inc. O. S. L.—O. W. R. R. & N.)	70.79	7.44
Group 8.		
Colorado & Southern	50.85	1.26

* Receipts were in excess of deliveries.

It is clearly apparent from the above that the following railways having an excess of box car equipment have not complied with the request of the Commission on Car Service to deliver a designated excess of box cars to southern and western connections above the number of box cars received from such connections:

BOSTON & ALBANY
MAINE CENTRAL
LEHIGH VALLEY
PHILADELPHIA & READING
NEW YORK CENTRAL
MICHIGAN CENTRAL
WABASH
TOLEDO & OHIO CENTRAL

The following additional railways, which are delinquent in sending in their reports of box cars interchanged with connections, are not satisfactorily reducing the excess of box car equipment on line as compared with number owned, according to reports made to the Commission on Car Service:

Road.	*Nov. 15*	*Nov. 23*	*Dec. 1*	*Dec. 8*
Group 2.				
Baltimore & Ohio	123. 54	123. 72	124. 60	129. 33
Erie	117. 77	116. 58	121. 65	122. 47
Long Island	660. 97	633. 15	644. 75	695. 40
New York, Ontario & Western	214. 86	210. 71	215. 85	202. 19
New York, Philadelphia & Norfolk	119. 05	131. 28	141. 08	140. 07
Group 3.				
Ann Arbor	97. 07	91. 29	111. 40	117. 65
Grand Rapids & Ind	128. 80	125. 75	130. 75	135. 78
New York, Chicago & St. Louis	117. 78	121. 98	135. 96	126. 70
Pere Marquette	121. 72	119. 31	119. 86	117. 33
Wheeling & Lake Erie	288. 79		305. 44	291. 34
Group 4.				
Chesapeake & Ohio	146. 91	141. 92	144. 60	181. 38
Norfolk Southern	93. 66	97. 57	109. 64	111. 93
Seaboard Air Line	107. 93	99. 33	103. 66	108. 06
Group 5.				
Florida East Coast	136. 22	140. 99	142. 04	161. 96
Group 6.				
Duluth, South Shore & Atlantic	138. 21	121. 46	131. 65	124. 70
Group 8.				
Kansas City Southern	116. 19	94. 89	112. 04	113. 40
Group 9.				
International & Great Northern	226. 43	218. 60	234. 15	204. 76
Group 11.				
Can. Govt. Rys. (Intercolonial)	101. 49	108. 60	113. 33	117. 33

LOCATION REPORTS.

Reports overdue from the following Railroads have failed to reach the Commission:

Delaware & Hudson, report of box cars for December 8th, and all reports for all dates as to open cars.

Louisville & Nashville, all reports for December 8th.

Chicago, Milwaukee & St. Paul, all reports for December 8th, and also reports for all dates as to the separation of box and open cars.

Chicago and Northwestern, all reports for December 8th.

M. K. & T., all reports for December 8th.

El Paso & Southwestern, all reports for all dates as to the separation of box and open cars.

Chicago Belt, all reports for all dates.

Chicago, Rock Island & Gulf, all reports for all dates.

Midland Valley, all reports for all dates.

Spokane, Portland & Seattle, all reports for December 8th.

Canadian Northern, all reports for all dates.

Grand Trunk Pacific, all reports for all dates.

Exhibit E.

New York, *January 11, 1917.*

SPECIAL REPORT OF INDIVIDUAL MEMBERS OF COMMISSION ON CAR SERVICE.

To the members of the executive committee:

It is well established that the observance of car service rules with respect to returning equipment promptly to owners has in the past been to a great extent superseded by use or appropriation of cars by individual lines governed only by expediency. A disregard for the spirit and letter of the rules on the part of a great many railroads has gradually led to an unsatisfactory observance of such rules in so far as they relate to the railroads collectively. This brought about a condition which rendered it impossible for some of the roads that had amply provided themselves with sufficient equipment to perform their obligations to the shippers directly served by them and their duties as carriers to the general public.

The result of the inability or indisposition of the railroads to regulate these matters on an equitable and just basis was reflected by considerable discontent and numerous complaints from shippers in certain localities. Because of the existing situation the Interstate Commerce Commission considered it necessary to take cognizance of the matter and institute an investigation with specific reference to coal cars, but it was extended to include all classes of equipment. This investigation was initiated by Commissioner McChord in an informal manner in Louisville, Ky., on November 3, 1916. From the testimony of railway officials called before the Commissioner and from the evidence of certain shippers he felt justified in requesting the chief executives of the railroads to in some way evolve a plan by which the existing manifestly unfair distribution of freight equipment might be promptly corrected and its recurrence prevented.

In the midst of the transpiring of these events the fall meeting of the American Railway Association was held on November 15, 1916, in New York, having been transferred from Denver because of the serious car situation. At this meeting the association adopted by resolution certain changes in car service and per diem rules to better secure the use of equipment by car owners, providing also penalties for their enforcement by the commission on car service, and these rules were subsequently ratified by letter ballot of members of the association.

The regular meeting of the American Railway Association had been preceded by a conference of executives which had informally approved the action confirmed by the association on November 15. On that date the association named an emergency committee (for a short time known as the conference committee on car efficiency) to act with Commissioner McChord at Washington in dealing with the situation. It was stated at that time by the president of the association that very arbitrary action would have to be taken by this committee and that it was apparent a crisis had been reached where the railways would have to demonstrate their ability to properly handle their own affairs or some other body would do it for them.

This special committee, with the then existing commission on car service, met Commissioner McChord at Louisville, at which time the Commissioner was informed that the American Railway Association had delegated full authority to its emergency committee to handle the car interchange question and to cooperate with the Interstate Commerce Commission at Washington in obtaining reliable information and

applying the proper remedies. The members of the emergency committee then took up the work at Washington and until January 1, 1917, prosecuted it in close cooperation with the Interstate Commerce Commission, Mr. F. B. Dow, attorney of that Commission, sitting constantly with the railway committee. Through Mr. Dow, Mr. McChord and the other Commissioners were kept informed of the details of the work.

One of the first accomplishments was a joint conference between a representative of the Interstate Commerce Commission, representatives of the shippers, and the emergency committee, which resulted in the approval by the Interstate Commerce Commission of the filing of tariffs, effective on short notice, providing for progressive demurrage, and, by the substantial increase in demurrage rates thus secured, delay to cars at destination will be materially reduced. During the deliberations on this very important matter the question of an increase in the per diem rate was brought up and it was clearly evident that the powers possessed by the emergency committee, which were subordinated to those of the commission on car service, were unsatisfactory to the Interstate Commerce Commission. Approval by that Commission of the higher demurrage had been predicated upon improved car distribution as between the railways and upon an imposition of a much higher per diem rate. As there was considerable difficulty and delay in securing approval of the increase in per diem from 45 cents to 75 cents, the situation was brought to the attention of the executive committee, which committee was impressed with the necessity of investing the emergency committee with increased powers and greater initiative. The executive committee consequently abolished the special emergency committee and reconstituted the commission on car service, which then became the cooperative committee working with the Interstate Commerce Commission at Washington. The only change in personnel between this committee and the former emergency committee was in the chairman, who was the chairman of the former commission on car service.

This reconstituted commission on car service resumed its activities and by cooperation with the Interstate Commerce Commission brought about a conference between the representatives of the shippers and railway traffic officials with a view of establishing reconsignment tariffs that would eliminate well known and long continued abuse of this privilege. The final recommendations of the carriers have been filed with the Commission, which will submit them to shippers, and this question is still a pending one between the commission on car service and the Interstate Commerce Commission.

The commission on car service also succeeded in bringing about a uniform agreement between Atlantic and Gulf ports as to reduction in free time at seaboard. It has not been thought expedient to request the Interstate Commerce Commission to approve the filing of tariffs embracing these reductions to go into effect upon less than statutory notice, but these tariffs will be filed in the usual manner.

Concurrent with these events the commission on car service obtained from the railroads weekly reports showing comparisons between cars on line and cars owned, car accumulation reports, status of embargoes, reports of car interchanges, and other data bearing on excess equipment, its location, physical condition and employment. Predicated on these statements the commission on car service issued divers requests directing the readjustment of equipment as between the carriers.

Also associated with these activities the commission on car service performed its duty to the American Railway Association as outlined in the per diem and car service rules. It endeavored to make its activities conservative but effective through the establishment of agencies from which could be obtained first-hand knowledge as to conditions existing on certain railways which appeared from the reports to be abnormal.

It was found that the Interstate Commerce Commission had in the field inspectors who were reporting directly to that Commission on cases of car abuse, and as the com-

mission on car service also had inspectors at work, special arrangements were made by which the inspectors of the Interstate Commerce Commission and those of the American Railway Association might work in harmony for the common good.

Many complaints reaching the Interstate Commerce Commission by mail and telegraph from shippers and from individual railways were turned over to the commission on car service for investigation; it was possible to show the Interstate Commerce Commission that many of these complaints were unfounded and that car abuse was in some cases apparent only, and it is gratifying to note that through the activities of the commission on car service there was a marked decrease in the number of such complaints received. The Interstate Commerce Commission was freely furnished with statistics of car location, car accumulations and car interchanges, which were available from special reports made by the carriers to the commission on car service.

In connection with the work of car distribution, representatives of individual carriers appeared on request before the commission on car service, which went over their local situations in detail and impressed upon them the necessity of giving their whole support to the work of redistributing the cars to sections where most needed, regardless of their traffic conditions. It was found necessary in many of these cases to dispose of countless reasons advanced why the desired help could not be extended, and in nearly every instance promises were secured that the individual carrier would give its earnest cooperation. Close attention was given to the situation at large cities where cars had accumulated under load and the formation of local committees was secured to adjust such situations as well as to improve conditions at seaports where a large number of cars were being held.

In the matter of car relocation, the commission on car service faced a very difficult problem. Because of the unusual drift of traffic, as well as the past neglect of the carriers themselves to strictly observe car service rules, the equipment had been badly scattered, the excess of open top equipment being largely in the west and the excess of box car equipment principally in New England and the east. On account of the shortage of coal cars threatening a fuel famine, Commissioner McChord had already notified the roads to return open top cars, and one of the first acts of the commission on car service was to issue its own request to the carriers in confirmation of the notice of the Commissioner. Because of threatened serious loss to the fruit industry, the commission on car service issued a similar request to return fruit refrigerator cars to home territory.

The diversion penalty on freight cars was adopted by a large majority vote of members of the American Railway Association, but it was found expedient to postpone its effective date until January 1 so that the commission on car service might have time to comprehensively analyze from current reports the existing situation.

As the commission on car service, in confirmation of the notice of Commissioner McChord, had already requested the return of open top cars to owners and had also made a similar request with respect to refrigerator cars, there were no grounds for further postponing the diversion penalty as to such classes of equipment and this penalty, by rule of the association, went into effect January 1, 1917. The commission on car service feels that it should materially aid in accomplishing the result desired by the Interstate Commerce Commission in readjusting the open car situation.

In dealing with the box car situation, the commission on car service gave careful consideration to the means that might accomplish the desired result in the shortest space of time. It would have been possible to have issued an order similar to that covering open top and refrigerator cars and require the return of box car equipment to owners, not suspending the diversion penalty as to such equipment. The box car equipment, however, was very widely scattered as to ownership, some lines having as low as one-tenth of home box cars on home rails. Under these conditions the imposition of the diversion penalty would have imposed such a degree of car ineffi-

ciency through restricting the available car supply as to seriously increase the existing car shortage. Under such an order also the only equipment which would be available to move to western and southern roads would be their own cars, many of which were tied up under load or were upon the lines of their immediate neighbors in the same territory or upon roads which did not have an excess of box car equipment above ownership. An attempt was, therefore, made to shift box cars in large lots without regard to ownership, first getting the excess of such equipment out of New England territory and requiring lines between Chicago and New York to deliver a specified excess of box cars to western and southern roads. Had the commission on car service received the immediate assistance of every one of these lines, as it had a right to expect, and if these lines had shown a disposition to make some sacrifice of their own interests to help the deficiency roads, many of which were in a really desperate condition, this policy would have resulted at once in a large redistribution of the box car equipment. Some of the roads have cooperated to a large extent, some have done something in the desired direction and some have done very little. The commission on car service can not feel any responsibility for the failure of such roads, members of the American Railway Association, for not doing their share in meeting the situation with which the railways as a whole are confronted. The undersigned members of the commission on car service feel that in adopting their policy, both as to open top and box car equipment, they were acting in accordance with their best judgment and with the sole desire of securing a readjustment of these cars so that the car owners might receive as promptly as possible the number of cars they normally have on their lines.

Because of complaints which were coming to it, the Interstate Commerce Commission called a formal hearing December 28, at which the roads were required to show cause why certain mandatory orders should not be issued by that body. While differences of opinion were expressed, the railways were practically unanimous in the belief that such an order, carrying with it the statutory fine of $5,000 for each violation of a specific order of the Interstate Commerce Commission, would be entirely too drastic and would seriously confuse the situation and make a bad matter worse. The opinion of the commission on car service was presented to the Interstate Commerce Commission in part as follows:

> * * * certain salient facts stand out as reasons for expecting the more prompt movement of cars in the future; namely, the increased per diem; progressive demurrage; and diversion penalty, and that by reason of emergency relocations of equipment, certain car service rules have not been made applicable, and that in the judgment of the commission on car service, no code of rules could be prescribed by the Interstate Commerce Commission applicable to all of the railroads which would properly improve the immediate situation; that it was the purpose of the American Railway Association through the commission on car service to continue the constant supervision of the car service practices throughout the country, and to develop further experience, devoting itself, specially, at all times to extraordinary effort to relieve conspicuous congestions and shortages which interfere with the largest measure of car efficiency, asking respectfully that the proposed order be held in abeyance by the Interstate Commerce Commission at least until March 1, at which time a report could be made of experience under the new rules and present practices and a foundation laid for more intelligent disposition of the question on a permanent basis.

Following this meeting the commission on car service was instructed by the executive committee to move its headquarters to New York, and at its first meeting at that point was verbally notified by the general secretary that its activities should be suspended until the meeting of the executive committee on January 11.

As to the future work of the commission on car service, whilst there has been improvement in the general car situation, much remains to be done. The undersigned members of the commission on car service strongly urge that accomplishment of effective results in redistributing cars and in eliminating car delay, for which carriers or shippers are responsible, depends entirely upon the railway committee having the confidence and cooperation of the Interstate Commerce Commission, as well as upon the unanimous and united support of every member of the American

Railway Association. The Interstate Commerce Commission has already recommended in its annual report the taking over of the regulation of the interchange of cars and two bills have been introduced in Congress for the same purpose. We believe, however, if the Interstate Commerce Commission can be convinced that the railways themselves can successfully cope with any situation that may arise with respect to car shortage or redistribution of cars so that shippers everywhere throughout the country may have equal opportunity in the use of equipment and so that the shippers on a few railways may not receive undue advantage, the American Railway Association will be permitted by the Interstate Commerce Commission to retain control of the situation. It is essential, however, that the Interstate Commerce Commission shall be made to feel that the railway representatives who may be selected to cooperate with it will be clothed with the necessary authority to enforce their acts and that they should be put in a position to reach a prompt and final decision on matters which may be brought up with them from time to time by the Interstate Commerce Commission.

The members of the commission on car service consider it their duty to inform the executive committee that, in their opinion, we are confronting a serious crisis. The transfer of the headquarters of the commission on car service from Washington to New York would undoubtedly have been entirely satisfactory to all members of the commission on car service had the change met with the full acquiescence of Commissioner McChord and the other members of the Interstate Commerce Commission and if Mr. Dow continued to sit with the railway representatives here. From all information it has been possible to gather, the change in location is very unsatisfactory to Commissioner McChord, and there is no hope of either himself or Mr. Dow attending our future sessions. It would be unprecedented for the Interstate Commerce Commission to turn over this duty to some other Commissioner in the hope that he would serve on the committee of railway representatives.

The members of the commission on car service feel that the results already accomplished are worthy of the support and commendation of the American Railway Association, but have grave doubts of the efficacy of the future efforts of any railway committee acting independently without the cordial cooperation of the Interstate Commerce Commission. It is not to be expected that that Commission will drop its own investigation, and it is much to be regretted if complaints which will continue to come directly to the Interstate Commerce Commission may be handled by that Commission's inspectors without reference of such matters to the commission on car service. Misunderstandings of conditions, which might otherwise be easily explained, are bound to occur, and the final result of the dissociation may be the issuance of drastic orders that might possibly be prevented through the close association that should exist between the work of the commission on car service and that of the Interstate Commerce Commission with respect to the same subject matter.

(Signed) W. L. PARK,
E. J. PEARSON,
W. J. WORTHINGTON.

42 I. C. C.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 18th day of January, A. D. 1917.

No. 9284.

CAR SUPPLY INVESTIGATION.

It appearing, That by order dated November 4, 1916, the Commission, upon its own motion, entered upon a general investigation covering all sections of the United States, concerning the supply, exchange, interchange, and return of freight cars, and all rules, regulations, and practices relating thereto, with a view of entering such order or orders as the Commission might deem appropriate, and that investigation of the matters and things involved has been had, and that the Commission has, on the date hereof, made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It further appearing, That the said order dated November 4, 1916, was served upon all the carriers by railroad subject to the act, in the manner provided by law, said carriers being hereinafter referred to as respondents;

It further appearing, That the present car service rules of respondents, stated in Exhibit A, appendix to the report herein, are unreasonable to the extent that they differ from the car service rules found reasonable and stated in a subsequent paragraph of this order;

It further appearing, That the practices of respondents in failing to observe the present car service rules, stated in Exhibit A, appendix to the report herein, with regard to the return of foreign open-top coal and coke cars and railroad owned or controlled refrigerator, heater, ventilated, and insulated cars, to the extent that those rules are not modified by the rules found reasonable, stated in a subsequent paragraph of this order, are in violation of section 1 of the act:

It is ordered, That the above-named respondents be, and they severally are hereby, notified and required to cease and desist, on or before February 21, 1917, and thereafter to abstain, from said violations of the act to regulate commerce.

It is further ordered, That respondents be, and they are hereby, notified and required, on or before February 21, 1917, to establish, and thereafter to maintain, and observe the following car service rules, which are found to be reasonable:

1. All foreign open-top coal and coke cars, and all foreign railroad owned or controlled refrigerator, heater, ventilated, and insulated cars received under load may be forwarded to destination; when original lading is removed, or when received empty, they must be returned to their owners, either loaded or empty—

(*a*) Direct, if belonging to direct connections;

(*b*) Through the proper home route, if belonging to other than direct connections.

(NOTE.—The home road shall have the right to demand the return of its empty cars at the junction point where delivered loaded.

This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.)

2. The proper home route for cars belonging to other than direct connections includes the following deliveries only:

(*a*) Loaded, consigned (via any route) to a destination on the home road;

(*b*) Loaded, consigned (via any route) to a destination on a direct connection of the home road; or

(*c*) Loaded, consigned to a destination on the road from which originally received, if such movement is in the direction of home; or

(*d*) Empty, to the road and at the junction point from which originally received.

3. (*a*) Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "for unloading."

A car received loaded in switching service, when the original lading is removed, must be returned to the home road, loaded or empty, if a direct connection within that switching territory; otherwise, unless it home routes from the switching line to some other road, it must be returned to the delivering road, loaded or empty, in accordance with rules 1 and 2.

(*b*) An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "for loading."

The road delivering the car to the switching road must in all cases specify loading, route, and destination, which must be in accordance with rules 1 and 2.

The switching road must comply with the instructions of the delivering road.

4. These rules do not apply to cars reconsigned with original lading under duly filed and published tariffs until the original lading has been removed therefrom.

5. Any delivery of a foreign open-top coal or coke car or railroad owned or controlled refrigerator, heater, ventilated, or insulated car, except as provided in these rules, is a diversion.

It is further ordered, That this order shall continue in force from the date when it shall take effect until May 1, 1917.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

O

EXHIBIT A.

No. 1008.

The Railroad Commission of Ohio, et al.,

vs.

The Hocking Valley Railway Company.

No. 1009.

The Railroad Commission of Ohio, et al.,

vs.

The Wheeling & Lake Erie Railroad Company.

Submitted June 29, 1907. Decided July 11, 1907.

Defendants are engaged principally in transportation of coal from mines located upon their lines. Certain other railways purchase their fuel supply from coal operators owning mines upon the lines of defendants and send their own cars upon the lines of defendants, consigned to the coal companies with which railways so sending their cars have contracts for fuel supply. Certain other coal operators have upon the lines of one of the defendants leased, or so called "private", cars devoted exclusively to the use of such leases. During a part of the year defendants are unable to furnish all of the cars desired by coal operators along their lines, and at such times the available cars not specially consigned or restricted as to use are divided among the several coal companies according to the capacities of their several mines. But in such distribution the foreign railway fuel cars and the leased or "private" cars are ex-

cluded from consideration and are given to the coal companies to which they are consigned or assigned in addition to the full share of cars allotted to such mines in the proportionate distribution. Complaint alleges unjust discrimination against other coal operators along the lines of defendants, in that such distribution of cars and such failure to count the foreign railway fuel cars and the leased or "private" cars gives the coal operators to whom such cars are consigned and assigned unwarranted advantages over the other operators in the mining and marketing of coal.

A carrier should give to owner or lessee of private cars the use of such cars; and should also give to a coal company the foreign railway fuel cars consigned to it; but that such "private" and foreign railway fuel cars should, in the distribution of cars, be counted against the company to which delivered and such company should not be given, in addition to such delivery, a share of the system cars except when the number of "private" and foreign railway fuel cars so delivered to it is less than its distributive share of the available cars, including system cars, foreign railway fuel cars, and so-called private cars, in which event it should be given only so many of the system cars as are necessary, when added to the number of private and foreign railway fuel cars assigned to it, to make up its distributive share of the total available cars, including system cars, foreign railway fuel cars, and so-called private cars.

W. H. Ellis, Attorney-General of Ohio; H. B. Arnold, R. J. Mauck and S. W. Bennett for complainants.

J. H. Hoyt, Doyle & Lewis, H. M. McKeehan and W. N. Duncan for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

The complaints in both of these cases were brought by the Railroad Commission of Ohio and the individual members of that body. The Attorney-General of the State ap-

peared for the complainants. Although a separte record was made in each case, both were heard at the same time and argued together. The decision of the Commission is therefore included in one report.

The basis of both complaints is that the owners and operators of coal mines along the lines of the defendants engaged in shipping coal to other States are unjustly discriminated against in the distribution of cars, although there are two features, one peculiar to each case, as follows:

In the complaint against the Hocking Valley Railroad Company, it is alleged that it owns a large percentage of the stock of the Sunday Creek Company, owning and operating mines in Ohio and West Virginia, on the lines of the Hocking Valley and of the Kanawha & Michigan Railway companies, and that while it has not adequate equipment of its own, it has loaned, leased, and furnished cars to the latter company.

In the complaint against the Wheeling & Lake Erie Railroad Company, it is stated that certain so-called "private" cars, claimed to have been purchased by the Massilon Coal Company and the Wheeling and Lake Erie Coal Mining Company, are not included in or charged against the percentages in distribution of cars to coal mining companies.

Paragraph III of the complaints is identical in that it alleges that defendants unjustly discriminate against the owners and operators along their lines of railway engaged in shipping coal by not considering "foreign railway fuel cars" in the percentages or distributive number of cars according to ratings established by them based on the capacities of the mines.

"Foreign railway fuel cars" are cars sent onto the lines of defendants by other railway companies for the purpose of being loaded with fuel coal for the use of such other railway companies. The cars are consigned to certain coal companies with which the railroad companies so sending the cars have contracts for the furnishing of fuel coal in connection with which it is stipulated that the

railroad companies will furnish their cars for loading such fuel coal. These cars so consigned are, by the defendant companies, not taken into account in the distribution of available cars among the several mines and operations along their lines.

The defendants, from time to time, distribute the available cars to be loaded with coal according to certain ratings established and based upon the respective capacities of the mines.

The defendant, the Hocking Valley Railway Company, alleges that prior to the 1st of January, 1906, it did count in the distribution foreign railway fuel cars, but that the foreign railway companies so sending their cars upon defendant's line notified it that if it did not cease its method of counting such cars in the allotment of cars to the various mines, the sending of such foreign railway fuel cars would cease altogether or greatly diminish, and that because of that threat and because of the fact that competing roads were not at that time so counting such cars in distribution it ceased to count them; that on or about August 15, 1906, it learned that a majority of competing railroads in the State of Ohio counted foreign cars against the mines to which they were delivered, and then defendant again began so counting these cars in the allotment to the mines to which consigned and so continued until January 1, 1907, when the practice was again discontinued on renewal of the threat to discontinue or greatly diminish supply of cars so furnished.

In December, 1906, the Ohio Railroad Commission decided that a common carrier in Ohio could not be permitted to suffer freight cars to come upon its line for the use of a shipper located thereon except upon condition that such cars could be used by other shippers similarly situated. It issued an order in effect requiring the carriers to count and distribute in accordance with their ratings all of the available cars upon their lines regardless of ownership or purpose for which sent to those lines. The Sunday Creek Company which owns a large num-

ber of coal mines in the Hocking district, petitioned the United States Circuit Court for the Southern District of Ohio, Eastern Division, for an order restraining the Ohio Railroad Commission from enforcing its order and the carriers from complying therewith. The application for such restraining order was concurred in by the carriers on the ground that the Railroad Commission's order would deprive them of property without due process of law, and was an interference with the movement of interstate commerce. The restraining order was granted and, at the time of hearing these complaints, was still in force.

It is to be noted that in that proceeding the Sunday Creek Company is suing the Hocking Valley Railway Company, which owns nearly all of the stock of the Sunday Creek Company and the Wheeling and Lake Erie Coal Company is suing the Wheeling & Lake Erie Railroad Company, which is the owner of one of the mines leased to and operated by the Wheeling and Lake Erie Coal Company. It cannot be held that such a proceeding fairly discloses the interests of the many other producers of coal or that other producers would be concluded by determination of the interests involved in such intercorporate relations.

Since this case was argued the complications have been relieved by the Railroad Commission of the State of Ohio agreeing to revoke its order and an understanding being reached that thereupon the court would dismiss the cases.

In general, the basis of distribution of the system cars was not complained of as unreasonable or unfair. Evidence was given as to one instance in which a coal company had continued to draw cars in the allotment for one of its mines that had not been worked for about a year and the track to which had been torn up and the tipple of which had gone into decay. It is not understood that any defense of such oversight or discrimination was offered.

The Hocking Valley Railway Company shows that it owns and controls 11,000 coal cars and that for the last ten years it has owned and controlled from 8,000 to 11,000 such cars. During a substantial portion of the year it has a large number of idle cars; for the greater portion of the year it

is able to provide all the cars needed, but for four or five months in the year it is unable to meet the maximum demand of shippers of coal. It admits that it furnishes cars for use upon the lines of the Kanawha & Michigan Railway Company, which is a direct connecting carrier and which has a large traffic in coal, coke, lumber, and other commodities; and shows that on account of the inability of the Kanawha & Michigan Railway Company to obtain necessary equipment with which to do its business, the Hocking Valley Railway Company sold to the Kanawha & Michigan 2,500 of its cars, but that, at the same time and before delivering these cars to the Kanawha & Michigan, it purchased and put upon its own lines 3,020 new cars. As before stated, favoritism in the sending of the Hocking Valley Railway's cars to the K. & M. road is alleged, on the ground that many mines of the Sunday Creek Company are located on the lines of the K. & M. road and the stock of the Sunday Creek Company is largely owned by the Hocking Valley Railway Company. The testimony does not, however, establish any favoritism toward that company in so sending cars to the K. & M. road. The testimony was that the distribution to the K. & M. was made on the basis of supply and demand, and that if the supply was short on the Hocking Valley the K. & M. was cut proportionately. The K. & M. is in substance and effect a part of the Hocking Valley system. In its annual report to this Commission the K. & M. states it is subsidiary to and controlled by the Hocking Valley System through ownership of capital stock. The question of ownership by the Hocking Valley Railway Company of the Sunday Creek Company is not in issue in this proceeding beyond the question of whether the Hocking Valley Company discriminates in favor of the Sunday Creek Company in the distribution of cars.

The defendant, the Wheeling & Lake Erie Railroad Company, owns 11,400 cars. The basis of its system of distribution of cars among the mines is the tonnage rating of the mine. It states that cars on its line are divided into three classes:—

"(*a*) System cars, which include cars owned by the defendant, or such as may be on its line of railroad and not owned by some specific shipper or restricted as to use.

"(*b*) Foreign railway fuel cars, which include cars of foreign railroads specifically consigned to certain operators to be loaded by the operators with coal for the use of such foreign railroad in the operation of its railroad.

(*c*) Private cars, which include cars owned or leased or subject to the exclusive control of particular persons or corporations."

It admits that the "system" cars included in class (*a*) are distributed among the coal operators in proportion to their immediate requirements based upon the tonnage rating of their mines, but that in making such distribution foreign railway fuel cars and private cars are not counted. It also alleges that if such foreign railway fuel cars were counted in the general distribution the supply of such cars would be cut off or greatly diminished.

In this case, the question of the distribution of 1,500 so-called private cars, which are held subject to exclusive control of particular coal companies, involved. These are the cars included in class (*c*) in the division of this carrier's cars above referred to. The method in which the defendant company acquired these cars and under which the coal companies obtained exclusive control of them is, in brief, as follows:—

Arrangements were made for the purchase, through trustees, of the 1,500 cars in question. The Massillon Coal Mining Company and the Wheeling & Lake Erie Coal Mining Company advanced the initial payment of 15% of the purchase price of the cars, aggregating about $150,000. The cars were delivered to trustees, who, in turn, leased them to the coal companies for a period of fifteen years. The trustees then sold the cars to the Wheeling & Lake Erie Railroad Company subject to the leases, and the Wheeling & Lake Erie Railroad Company issued first-lien car-trust equipment

obligations for the remaining 85% of the purchase price of the cars. It also issued second lien car-trust certificates payable contemporaneously with the above for the 15% of the purchase price advanced by the coal companies, which second lien car-trust certificates were accepted by the coal companies in return for their cash payments, and, by mutual agreement between the Wheeling & Lake Erie Railroad Company and the coal companies, the term of the leases for the exclusive use of these cars was reduced to ten years, subject only to the right of the railroad company to load the cars with traffic moving in the direction of the mines of the coal companies. Assuming, therefore, that the car-trust certificates will be paid as they mature, the unincumbered ownership of these cars will rest in the Wheeling & Lake Erie Railroad Company. It is in evidence that this defendant company is willing to make similar arrangement with any other coal operator on its line who wishes to purchase cars thereunder. The defendant avers that it is without money or credit with which to purchase cars which it needs, and would be glad to have the use of cars acquired in the manner above described and subject to similar leases by coal companies operating on its line of road.

The testimony shows that the only interest which the Wheeling & Lake Erie Railroad Company has in any of the coal properties owned by the Massillon Coal Mining Company or the Wheeling & Lake Erie Coal Mining Company is that a mine owned by the Wheeling & Lake Erie Railroad Company is leased to the Wheeling & Lake Erie Coal Mining Company.

It is intimated that as the lines of the Hocking Valley Railway, proper, are entirely within the State of Ohio there is some doubt as to the interstate character of its coal business and some question as to the jurisdiction of this Commission is suggested. The testimony shows, however, that the greater portion of its coal business is interstate, and defendant can not know when it transports empty cars to the mines for loading whether such cars will be loaded with

intrastate or interstate traffic. Manifestly, it would be impossible to assign cars separately for the two kinds of traffic, and an effort to keep them separate in the movement of empties and of loads would involve endless work and expense. In the case of the Steamer Daniel Ball *vs.* U. S., 10 Wall, 557, 19 L ed 999, Mr. Justice Field said:—

> "For whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced."

In the case of the Texas & Pacific Railway Company *vs.* Abilene Cotton Oil Company, 204 U. S. 426, 51 L ed. 553, 27 Sup. Ct. Rep. 350, the court held:—

> "That a shipper seeking reparation predicated upon the unreasonableness of the established rate must, under the act to regulate commerce, primarily invoke redress through the Interstate Commerce Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable."

In that opinion it is stated:—

> "When the general scope of the act is enlightened by the considerations just stated it becomes manifest that there is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibition against preferences and discrimination.
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> * * * * * * * *
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> "Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibition

against preferences and discrimination, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted."

What is one of the principal wrongs which the statute was intended to remedy? Certainly "any undue or unreasonable prejudice or disadvantage in any respect whatsoever;" and section 15 of the act authorizes and empowers the Commission and makes it its duty, not alone to determine and prescribe "what will be the just and reasonable rate," but "what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed," and the carrier "shall conform to the regulation or practice so prescribed."

Therefore there seems to be no room for questi , under the decision referred to, as to the original jurisdiction of this Commission over alleged discriminatory practices on the part of carriers engaged in interstate commerce. It may be claimed that the decision in the above case is not decisive and conclusive on this point, yet every reason advanced by the Supreme Court in support of the conclusion that the lower Court had not original jurisdiction in rate matters appears to apply with equal force to our view that this Commission has original jurisdiction of questions of discriminatory practices prohibited by the act to regulate commerce.

It is suggested that the Commission has no power to regulate the distribution of cars and in this connection reference is made to the commission's decision in the case of Mason *vs.* C. R. I. & P. R. Co., 12 I. C. C. Rep. 61, in which the complaint was dismissed upon the statement being made that the Commission had no authority to fix rules and regulations governing reciprocal demurrage. Clearly the Commission has no jurisdiction to establish or fix in the first instance rules governing the conduct of the carrier's business or regulating its distribution of cars, but, as held in many decisions of the Commission, it has undoubted power and jurisdiction to deal with complaint that the practices of car-

riers work unjust discrimination against shippers or localities.

There is an analogy between the jurisdiction of the Commission and that of a court of equity.

In Johnson Coal Mining Co. *vs.* Hocking Valley Ry. Co., 14 Ohio Dec. 209, Judge Dillon said:—

> "A court of equity will not assume to dictate the policy or business management of a common carrier aside from its clear duty under its charter or the statutes. That function belongs exclusively to the company itself, and will not be interfered with because changes ought to be made as apparently reasonable, necessary or otherwise. But where the common carrier itself adopts as a part of its business policy any advantageous facility for handling freight it must not discriminate in its use by the public, but must afford the facility equally to all, and to this extent equity will interfere by injunction to prevent such favored use thereof and compel its equal service to all."

Aside from the desire of foreign railways to provide a dependable and steady source of supply for fuel they are able to purchase their fuel coal cheaper by furnishing cars in which to transport it, and their ability to purchase is enhanced if the cars which are sent for fuel supply are not counted in the distribution of cars. The demand for railway fuel and the opportunity of securing some degree of uniformity throughout the year in its coal output enables the coal operator who can take a contract of this nature and be assured of a supply of cars which are not to be counted against him in the distribution, to work his mines more economically, more nearly to their full capacity and more steadily. He can therefore afford to sell the fuel cheaper than he would under different circumstances and has no doubt to some extent a corresponding advantage in the competitive markets for commercial coal. Obviously a railroad company would not send its cars on to the lines of another railway company, even for its own fuel supply, if they were

to be diverted from the intended use and distributed among others than those to whom consigned and for loading with commercial coal to various destinations on the lines of other carriers. To do so would be to deprive itself of the use of its own equipment when most needed, would make its fuel supply wholly uncertain, and, through lack of equipment, would possibly deprive it of the opportunity of handling profitable business.

It therefore seems apparent that foreign railway fuel cars should not be diverted from the purpose for which they are sent, but should be delivered to the operator to whom consigned. It seems equally apparent that such operator should not be given the decided advantage of having, in addition, at a time when no operator can get all of the cars desired, his full percentage or proportion of available system cars just as if he had not been furnished with any foreign railway fuel cars. Intercorporate relations between carriers and the coal companies served by them invite and lead to accusations of favoritism in these connections, which are not at issue in these cases.

In the case of the United States *ex rel.* Pitcairn Coal Company *vs.* Baltimore & Ohio Railroad Company, *et al.* 154 Fed. 108, in which the coal company sued for a writ of mandamus to require the Baltimore and Ohio Railroad Company to cease from subjecting it and other coal companies to undue and unreasonable discrimination in the shipping and transportation of coal, recently decided in the Circuit Court of the United States for the District of Maryland, practically the same questions were involved as are in these complaints, in that the railroad companies, parties defendant, did not count the private cars, or the foreign railway fuel cars in the general distribution. In the decision of this case Judge Morris said:—

> "Under the present system of individual ownership of coal cars it is not unreasonable that the owner shall have the exclusive use of his individual cars; on the contrary it is only just. But under the actual circumstances of the business of the coal trade on the Balti-

more and Ohio Railroad, from which it is apparent that the great struggle of the mine operators is to get sufficient cars to ship their product during the winter months, and that their business existence depends upon it, it is not unreasonable to hold that the railroad shall do all that it is practicable to do to avoid subjecting the operators who do not have the use of individual cars to unreasonable disadvantage. While it is true that the existence in the trade of a larger number of individual cars does increase the total car equipment, and so far as the individual cars satisfy the requirements of their owners does increase the number of free-equipment cars which the railroad has at its disposal, it still is a fact that in times of car shortage the demand is so great that all the mines having individual cars require and get their full percentage of the railroad equipment without reference to their own cars.

"Under the provisions of the Interstate Commerce Act the railroad must abstain from giving any undue or unreasonable preference or advantage to any mine owner in any respect whatsoever.

"The duty of the railroad under Section 1 is to furnish transportation upon reasonable request. It is not the duty of the shipper, but of the railroad, to provide the required vehicles of transportation. If for convenience or of necessity the vehicles are furnished by certain of its shippers, and are run regularly on the road just as its own equipment is run, they are, I think, to be treated for some purposes as part of the equipment of the road.

"These regularly run individual cars occupy the tracks and sidings, they are drawn by the locomotives and are operated by the employees of the railroad company and must lessen the facilities in that respect of the independent operators. Indeed an objection of the railroad company to individual ownership of cars is that they require special switching and special care to collect and classify them in order to haul them to

their respective destinations. As the independent mine operators have in this manner to suffer from individual cars being transported as part of the railroad's equipment in such large and constant numbers running regularly on the railroad's lines, it seems only reasonable that when distribution upon percentage is made, all this regular equipment then available should be taken into the calculation and not to first deduct the individual cars and give the independent mine operators only their percentage of the remaining available equipment. This taking of individual cars into calculation would not be depriving the individual car owner of the exclusive use of his cars and it would not be depriving him of any contractual right which he is entitled to retain and enjoy under the Interstate Commerce Act. The mine operator would, in any state of the car supply, continue to get the exclusive use of his individual cars as before, but when the supply was short he would not get so many of the railroad's general equipment. It would be rectifying an unreasonable disadvantage which has been shown to work a serious hardship upon the relator and the independent mine operators in the Fairmont region.

* * * * * * * *

"Under the ruling in the present case it becomes unimportant to inquire under just what contractual terms as between the railroad and the mine operators the individual cars are held. Some of these cars have been fully paid for by the railroad company by the working out of the mileage contracts under which they were placed on the road and are now the property of the railroad company, but the mine owners claim that under the contracts they are still entitled to their exclusive use. The exclusive use of other cars now belonging to the Baltimore and Ohio Railroad Company is claimed by virtue of an agreement made with the Monongahela River Railroad Company, the former owner. It is apparent with regard to the cars now

the property of the Baltimore & Ohio Railroad Company that these contracts would require careful scrutiny if it was necessary to go into that matter, and it might become a question to what extent the provisions of the interstate-commerce act would permit these cars now the property of the railroad company to be taken out of its distributable car supply.

* * * * * * * *

"My finding and ruling is that the relator is entitled to have allotted to it its percentage of all the available car-supply equipment, whether of general or individual cars, and that the relator and those in like situation with it are subjected to an unreasonable disadvantage by getting only a percentage of the free Baltimore and Ohio equipment, after having first eliminated therefrom the individual cars; but in no case are the owners of the individual cars or those entitled to them by contract to be deprived of the exclusive use of their individual cars, but the individual cars assigned by the owner to be loaded at specified mines should be charged against the specified mine as part of its pro rata distribution of cars."

As to foreign railway fuel cars, Judge Morris held that these cars were sent for a special purpose and could not be used for any other; that they are not available for commercial shipments, and that the coal so shipped is in a class different from the ordinary commercial shipments, and that therefore such foreign railway fuel cars should not be counted in the general distribution.

Note the difference between the case just referred to and that of the Logan Coal Company *vs.* Pennsylvania Railroad Company, 154 Fed. 497, recently decided in the Circuit Court of the United States for the Eastern District of Pennsylvania. In this case the Pennsylvania Railroad Company was, and for some time had been observing the following rule:—

"Commencing January 1, 1906, assigned cars—*i. e.*, cars for Pennsylvania Railroad fuel supply, foreign railroad cars especially consigned for the fuel supply of railroads consigning such cars, and individual cars assigned by the owners to specified mines for loading—will be charged against the capacity of the mines at which they are placed. The difference between the rated capacity of a mine and the capacity of the assigned cars placed for loading will be the rated capacity on which all cars will be prorated."

In this it will be noted that the fuel cars, including those for its own fuel supply, and the private cars *were* counted in the distribution. The Logan Coal Company sued out a writ of mandamus to require the Pennsylvania Railroad Company to discontinue the enforcement of that rule to assign all specially consigned fuel cars and private cars arbitrarily, giving them to the mines to which such cars were so consigned, in addition to their full quota of system cars. In deciding the case, Judge Holland said:—

"All other obligations laid upon transportation and railroad companies engaged in interstate commerce must be performed consistently with this paramount requirement of equal treatment to all. * * * It must accept the individual cars in connection with its own, so that all shippers of bituminous coal along its route will receive the same treatment and enjoy the same facilities for the transportation of their produce as any other, and when a practice which has been followed is found to work unjustly, and to the disadvantage of one shipper in favor of another, under the broad and preemptory terms of the commerce act it is the duty of the common carrier to so alter and adjust the practice that the discrimination effected against the shippers will be eliminated.

* * * * * * * *

"The relator under the order receives a slight advantage, as shown in the above illustration, over its

competitors in that it receives a pro rata of the defendant's cars upon a basis calculated on the difference between its rated capacity of the mine and the capacity of all its individual cars. As has been shown, this enables the relator to ship somewhat more of its daily output than a competitor who only receives the use of company cars. * * * It is true the defendant company is required to furnish sufficient facilities at all times to transport the merchandise of shippers along its route, but it occurs, in the bituminous-coal mining industry in certain of the winter months of the year, that the extraordinary demand for bituminous coal is far beyond the car capacity of the railroad company to transport, and it is conceded that the railroad company is not required to keep a car equipment sufficiently extensive to meet the maximum output at any part of the year, but that it is only required to furnish car facilities to bituminous coal shippers to meet a demand adjusted and regulated to utilize the company's car equipment with uniformity and regularity throughout the year. This, however, it appears the operators are unable to do, and it seems to me that when an operator elects to avail himself of his right under the laws of Pennsylvania to place individual cars upon the company's tracks, he must do so subject to such rules and regulations adopted by the railway company as will work out a result in accord with the requirements of the laws of the State of Pennsylvania and the provisions of the interstate commerce act requiring equal facilities for all.

"The relator is not in any sense discriminated against. First, it has the use of its own cars and its share of company cars upon a basis which gives it a certain advantage over its competitors, and in addition, it receives a certain compensation from the railroad company for its cars. They are placed upon the tracks of the defendant company, and the engines and the train crews and the moving facilities of the com-

pany are taxed to transport these individual cars, and there is no reason that I can see why they should not be regarded in the distribution of cars to shippers as part of the equipment, in order that the defendant company may be enabled to treat all shippers the same and, as near as may be, at all times in the year furnish car facilities for the transportation of coal along its line, upon a basis fixed upon the rated capacity of the mine as ascertained by the method adopted by the railway company. * * *

"What has been said in regard to individual cars applies to the use of fuel cars, whether they be those of the defendant company or fuel cars of other corporations purchasing coal from the relator. They should be treated the same as individual cars in the distribution of available cars, and the defendant company in its treatment of these cars by the order of January 1, 1906, in no way that we can see unduly or unreasonably discriminated against the relator." * * *

It will thus be seen that the conclusions reached by the Circuit Court of the United States for the District of Maryland and the Circuit Court of the United States for the Eastern District of Pennsylvania as to the propriety of counting the foreign railway fuel cars in the distribution of equipment are diametrically opposed. With the highest respect for the views of the court in the district of Maryland, we are of the opinion that the conclusions reached by the court for the eastern district of Pennsylvania are in accordance with the spirit of the act to regulate commerce and appear to be supported by the great weight of authority on the subject.

On page 68, of Report on Discriminations and Monopolies in Coal and Oil, the Commission said:—

"This system of allotting cars for fuel coal and not charging the same as against the percentage of the operator receiving the same is unjust and unfair

unless fuel coal is taken from all of the mines on the line of the road in the same proportion that cars are distributed."

In the same report, page 81, is incorporated the following recommendations:—

"*Third.*—That after reasonable time carriers engaged in interstate commerce be prohibited from using 'individual' or 'private cars' for the handling of coal traffic; and further, that when a carrier is unable to furnish all the cars required by the shippers upon its line, all cars in service on the road, excepting individual or privately owned cars until their use is prohibited, be treated as the equipment of the company and subject to distribution according to the system or plan in effect at that time."

It is to be noted that the recommendation of the Commission refers to "private" or "individual" cars in fact; not to cars which are private in name only.

We are of the opinion that the practice of these defendants in failing or refusing to make any account of foreign railway fuel cars in the distribution of cars among the operators is discriminatory and should be discontinued. We are equally of the opinion that a distribution of these specially consigned foreign railway fuel cars among operators, to be used for purposes for which they were not intended, as seems to have been contemplated by the order of the Ohio Railroad Commission, would be unwarranted and unfair. The total of the foreign railway fuel cars, the private cars and the system cars should be taken into consideration in determining the distribution. If the number of foreign railway fuel cars or of private or leased cars is less than the percentage or proportion of the company to which such cars are consigned or assigned, that company should be given all of the foreign railway fuel cars consigned to it and all of the private or leased

cars belonging to it, and a sufficient number of system cars to make up its proportion. On the other hand, if the number of foreign railway fuel cars consigned to it and of private cars assigned to it is greater than its proportion, all such cars so consigned or assigned to it should be delivered to it and the available system cars should be divided among the other operators on the basis of a changed percentage because of the elimination of the company or companies to which the foreign railway fuel cars and private cars have been consigned, assigned, and delivered.

As before stated, at one time the defendant—the Hocking Valley Railway Company—did count foreign railway fuel cars in the distribution, and it discontinued this practice because of the threat if it continued so to do the supply of such cars would be cut off or materially reduced. Consignor may not impose conditions which require carriers to indulge in unjust discrimination. Consignor may impose conditions as to the use of its own cars and may insist that its consignment orders with relation thereto shall be observed. It may not dictate as to the manner of distribution of the system cars of a carrier. The only interest consigning road can have in whether or not its cars are counted is the effect it may have upon the price it may have to pay for the coal.

It is also shown that the Hocking Valley Railway Company was influenced to discontinue counting these cars in the assignment, because it found that competitors were not counting them. When this question is definitely settled all will follow the same principle and all will be on an equality, and the effect can not be prejudicial to the interests of one as against all. It does not seem that the supply of fuel cars will be either increased or diminished, except as the actual needs of the carriers furnishing such cars may affect the supply.

This Commission is not in this case required to pass upon the transactions involved in the purchase and lease of the 1,500 private cars.

In Rice, Robinson & Winthrop *vs.* W. N. Y. & P. R. Co., 4 I. C. C. Rep. 149, 3 Inters. Com. Rep. 162, it is stated:

> "It is not the business of the shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation, and these means, of whatever style or pattern, must be open impartially to all shippers of like traffic. If the carrier hire or arrange in any manner for the use of vehicles he does not own, he has one of two things to do: He must furnish like vehicles to all competitors in the traffic, or must be careful to make no unjust discrimination and give no undue preference in his rates."

It is admitted that the cars so held under lease are devoted to the exclusive use of the company holding the lease and that they are not counted against such company in the distribution of the available cars.

The question is: Is such failure to count these cars an unjust discrimination against other coal mine operators on the line of defendant company, the Wheeling & Lake Erie Railroad Company? This question we are constrained to answer in the affirmative. The only consideration which these coal companies have paid for the leases in question is the advancement of $150,000 in cash, for which, in a comparatively short period, they received an equivalent amount of interest-bearing car trust certificates. Assuming that these leases are valid, we are of the opinion that it is a discrimination against other coal operators to give the lessees their full proportion of the available system cars just as if they did not have the use of the so-called private cars. There is always possibility that discrimination may be intensified or aggravated by conditions arising or occurring under which the carrier will be unable, because of insufficient power or inadequate terminals to promptly and efficiently transport all of the tonnage offering. We are of the opinion that the so-called private

cars herein referred to should be counted and considered in the distribution of equipment in the same manner as hereinbefore provided for foreign railway fuel cars; that is, the lessees of these cars should be given full and exclusive use of them, but should not be given a division of the system cars except when the supply of the so-called private cars and of foreign railway fuel cars assigned to them is less than their proportion of the total of available cars, including system cars, foreign railway fuel cars, and so-called private cars.

An order will be entered accordingly.

EXHIBIT B.

No. 1294.

Glenn W. Traer, Receiver of The Illinois Collieries Company,

vs.

Chicago & Alton Railroad Company.

No. 1295.

Glenn W. Traer, Receiver of The Illinois Collieries Company,

vs.

Chicago, Peoria & St. Louis Railway Company of Illinois.

No. 1317.

Glenn W. Traer, Receiver of The Illinois Collieries Company,

vs.

Illinois Central Railroad Company.

Submitted March 11, 1908. Decided April 13, 1908.

1. In establishing systems of car distribution, defendants have given the mines located on their respective lines daily tonnage ratings, which ratings are not at issue in this controversy. Under the systems established each mine is entitled daily to such percentage of cars as its tonnage

rating bears to the total numbers of cars available for distribution for commercial purposes. Defendants' fuel cars, foreign railway fuel cars, and private cars are not charged against the distributive share of the mines to which they are assigned. Complainant contends that this plan of distribution gives to some mines more cars than they are entitled to under their several ratings, and unjustly discriminates against it and other mines and mine owners.

2. Defendants claim that the necessity for fuel with which to operate their lines gives them the right to make private contracts therefor, and that the failure to count against the mines the cars furnished for such fuel supply permits them to make advantageous contracts and to get their coal at a lower price; that if they counted their own fuel cars in the distribution they would not only have to pay a higher price for their coal, but might not be able to contract for it at all.

3. Fuel is necessary and essential to the operation of a railroad, and the right of a carrier to contract for the purchase of its fuel supply with one mine or with a number of mines must be conceded; but if a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the act to regulate commerce or to the decisions of the courts or is opposed to public policy they are in no better position than the parties to any other contract which violates the legal principles relating thereto. A carrier can not inject illegalities in such contract and have it upheld on the ground of compelling necessity.

4. In these cases the Commission is of the opinion that as to the privately owned or leased cars and the foreign railway fuel cars the rule laid down in Railroad Commission of Ohio *vs.* H. V. Ry. Co., 12 I. C. C. Rep. 398, should apply, and that cars used by defendants upon their own lines for transportation of their own necessary fuel

supply may be given in any numbers to the mine or mines from which such fuel supply is received, but if such mine or mines also ship commercial coal the fuel cars so supplied must be counted against the mine or mines.

Cassoday & Butler for Complainant.

Winston, Payne, Strawn & Shaw, and Garrad B. Winston for Chicago & Alton Railroad Company.

W. S. Kenyon for Illinois Central Railroad Company.

Philip Barton Warren for Chicago, Peoria & St. Louis Railway Company of Illinois.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

The complaint in each of the above cases was filed by the Illinois Collieries Company, but upon the appointment of the receiver for said company he was, upon petition, substituted as complainant in each case. The subject of the complaints is practically the same in all three cases, and they were heard together upon record made in No. 1294 and are to be disposed of in one report.

The Illinois Collieries Company is a corporation with principal place of business at Chicago, Ill. It is engaged in mining and selling bituminous coal, and makes interstate shipments thereof over the lines of the defendants. Its mines are in Illinois and are located upon the lines of the Chicago & Alton Railroad Company and of the Chicago, Peoria & St. Louis Railway Company of Illinois. Its mine nearest to the line of the Illinois Central Railroad Company is 200 feet from the latter's right of way, and is served by that defendant through switching arrangements with the Wabash Railroad Company. Numerous mines of the character of those owned by the Illinois Collieries Company are located upon the lines of the respective defendants.

The several defendants have contracts for their own fuel supply with certain of the mines located on their respective

lines. Some of the mines have contracts to furnish foreign railways with coal and others have contracts with purchasers who furnish private cars for the transportation of such coal. Complainant sells its coal almost wholly in the open market, and each of its mines is dependent upon the defendant upon whose line it is located for cars to transport the output thereof. Complainant has no contracts for furnishing fuel coal to the defendants, and, except in a few instances, has not used foreign railway fuel cars nor private cars during the time covered by the complaints.

In establishing a system of car distribution the defendants have given the several mines located on their respective lines daily tonnage ratings, which ratings are not at issue in this controversy. Under the system established, each mine is entitled daily to such percentage of cars as its tonnage rating bears to the total number of cars available for distribution for commercial purposes. Defendants' fuel cars, foreign railway fuel cars, and private cars are not charged against the distributive shares of the mines to which they are assigned. After the assignment of such cars to said mines, each is given the same percentage of the remaining cars available for distribution that day as if it had received no cars at all. This permits these mines to ship a greater portion of their daily output than mines having the same tonnage rating but that do not have fuel contracts with the defendants nor the use of private or foreign railway fuel cars.

Complainant contends that this plan of distribution gives to some mines more cars than they are entitled to under their several ratings, and unjustly discriminates against it and other mines and mine owners; that the increased allotment to such mines makes a corresponding decrease in the cars to which complainant and the other mine owners would otherwise be entitled, and that their interstate shipments of coal are to the extent of that decrease thus restricted.

The failure to count the defendants' fuel cars against the

mines to which they are delivered was not specified in the complaint against the Illinois Central Railroad Company, but in brief and on argument it says that the question is one of great importance to it. At the time of the filing of this complaint the circuit court of the United States for the northern district of Illinois had enjoined the said defendant from counting foreign railway fuel cars and private cars against the mines to which they were assigned. The question of the Commission's jurisdiction of discriminatory practices, in the light of the decision of the Supreme Court in Texas & Pacific Railway Co. *vs.* Abilene Cotton Oil Co., 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, was decided by the Commission in Railroad Commission of Ohio *vs.* H. V. Ry. Co., 12 I. C. C. Rep. 398.

Defendants in their briefs concede that the prior holding of the Commission, in Railroad Commission of Ohio *vs.* H. V. Ry. Co., *supra*, eliminates the question of counting private cars and foreign railway fuel cars in the distribution, and that the question of counting the cars used for the defendants' own fuel is really the only question presented for determination. Defendants claim that the necessity for fuel with which to operate their lines gives them the right to make private contracts therefor, and that the failure to count against the mines the cars furnished for such fuel supply permits them to make advantageous contracts and to get their coal at a lower price; that if they counted their own fuel cars in the distribution they would not only have to pay a higher price for their coal, but might not be able to contract for it at all.

The Chicago & Alton Railroad Company has 360 hopper-bottomed gondola cars which it says are used solely for its own fuel, and which, because no shipper on its line has trestle from which to unload them, are not only inconvenient but impracticable for commercial use.

Complainant in these cases presents the following illustration, and argues that such a practice is unjustly discriminatory: A carrier offers to contract with two mines for 500

tons of coal per day, dividing the amount equally between them. The mines are each of 1,000 tons daily capacity. One mine accepts the contract, the other does not, and in turn the carrier gives the remaining portion of the contract to the first mine. The carrier has thus offered to the two mines a market created by itself; one mine has accepted the market so offered and the other has not. This leaves one mine with 500 tons of coal sold in a special market and 500 tons to find a common market, and the other has 1,000 tons to find a common market. The handling of the 500 tons sold to the carrier by the contracting mine requires the equipment of the railroad. The carrier can furnish cars for but 1,000 tons. It says it must have 500 tons for its necessary use, and sends the cars for that amount to the contracting mine. This leaves available cars of 500 tons capacity, in the distribution of which it says that it will not count the 500 tons that have been given to the contracting mine, but that it will divide the remaining cars on the basis of 1,000 tons rating for each mine, thus permitting the contracting mine to dispose of three-fourths of its output and the other only one-fourth.

The carrier says it is justified in doing this because the first mine has made a contract with it to furnish it coal, which it must of necessity have in order to operate, and as an inducement to such mine to make this contract it does not charge to that mine the number of cars necessary to handle the 500 tons sold to the carrier, and, in further consideration, permits said mine to enjoy the same proportional share in the remaining cars available for distribution as if it had not sold any coal to the carrier.

If two mines of equal daily capacity are located on the line of a carrier, and one sells its entire daily output locally and the other does not sell any locally, but its entire output must find some other market, it is clear that, although the capacities of the mines are the same, and each would be entitled to the same percentage of cars if they were both offering their output to the company, the one

would not be entitled to a rating because it would tender no coal and the other would be entitled to the equipment of the company for that day, and if it was sufficient to move its output, both mines would be on an equality, so far as the selling of their output is concerned. But if one mine sells one-half of its output locally and the other none at all, and the carrier has only enough cars to transport one-half of the combined output of the two, it would be unfair for the carrier to rate the mine selling one-half of its output locally at the same tonnage as the other mine and give to it one-half of the cars that it had on a given day.

If a carrier assigns to or uses for the transportation of its own fuel supply only such part of its equipment as is reasonably necessary therefor, it may be asked what difference can it make to the shippers along its line whether those cars go to the mine or mines owned by the carrier or to one or more mines with which the carrier has contracts for coal? The shipper who has no fuel contract answers this by saying that when one mine has such contract with carrier and is furnished cars under it without having its distributive share of cars for commercial shipments reduced thereby, such mine is given an advantage over its competitor that has no contract with the carrier, because it is enabled to work its mine more regularly and thus to keep its property in a more efficient condition—to retain its employees and thus to operate more economically and to sell its output more advantageously in the commercial market. To this the carrier and the shipper who has fuel contract with the carrier retort: "You were given an opportunity to take a contract upon the same terms and declined to do so."

Products offered a carrier for shipment in a given locality are usually tendered because the volume produced is in excess of that consumed in the local market. The object of the transportation requested is to get the surplus to a market of consumption. It is the duty of the

carrier, so far as it is in its power, to furnish the means of getting that output either from the mills or from the mines to the market.

That it is the duty of a common carrier to furnish means of transportation and to furnish them alike for all that are similarly situated the Commission has repeatedly held: Richmond Elevator Co. *vs.* P. M. R. R. Co., 10 I. C. C. Rep. 629; Eaton *vs.* C. H. & D. Ry. Co., 11 I. C. C. Rep. 619; Railroad Commission of Ohio *vs.* H. V. Ry. Co., *supra;* Powhatan Coal & Coke Co. *vs.* N. & W. Ry. Co., 13 I. C. C. Rep. 69.

One industry may not be built up by granting to it transportation privileges which are denied to and which work an unreasonable disadvantage against another industry. All must bear their just proportion, according to circumstances and conditions, of any disadvantage that may arise from insufficiency of facilities resulting from causes which are beyond the carrier's control.

It appears that the defendant, the Chicago & Alton Railroad Company, applied its system of car distribution and ratings thereunder to three mines not located on its lines, but which it reached through switching connections with other railways. Said defendant had no fuel contracts with them, but during the months of September, October, and November, 1907, it furnished cars to said mines under their respective ratings, for the transportation of approximately 130,000 tons of commercial coal. Defendant, the Illinois Central Railroad Company's line, does not reach complainant's mines at Litchfield, although it gives such mines a rating. It does not appear that it furnished cars to these mines.

Unless for the purpose of securing its own fuel supply it is neither right nor proper for a carrier to send its cars for loading at mines that are not located upon its line at times when it could only supply the demand for cars from mines that are located upon its line, perhaps wholly dependent upon it for both cars and transportation. Such a

practice necessarily intensifies an existing inability on part of the carrier to meet the demands of shippers who are dependent upon it and who have a right to rely upon its performance of its duty as a common carrier, and it curtails the already restricted opportunities of the mines that can secure neither cars nor transportation from any other carrier.

The carrier owes a special duty to shippers who are entirely dependent upon it for transportation facilities. In fact, its first duty is to such shippers. See Memphis Freight Bureau *vs.* Ft. S. & W. R. R. Co., 13 I. C. C. Rep. 1. It may not be compelled to nor may it voluntarily divert its equipment from its own line to shippers on another line when to do so would deprive its local shippers of needed equipment. A carrier may, of course, send its equipment from its line for the things that are necessary and essential for its own operation. This right arises from considerations of public policy which recognize the duty of a carrier to operate its line, and the diverting of its equipment in that instance is predicated on necessity. It is not an inherent right that is grounded on private contract. The limit of this right is measured by the extent of the necessity; it cannot go beyond that.

Fuel is as necessary and essential to the operation of a railroad as are rails, roadbed, and other equipment. Without it a carrier could serve no one. The right of a carrier to own mines for its fuel supply is conceded in the law. The right of a carrier to contract for the purchase of its fuel supply with one mine or with a number of mines must be conceded, as must also the right to utilize its facilities in providing and transporting those materials and supplies that are essential to the operation of its lines. In fact, a carrier must arrange in advance, by ownership or contract, for its fuel supply. Otherwise its ability to perform its functions would be as uncertain as its fuel supply. For that reason a carrier may contract for its fuel supply, and in so far as the contract is not opposed to public policy or in conflict with the statutes or the rules of law announced by

the courts, it must be regarded as any other private contract. Any contract of lawful subject-matter, regardless of the character of the parties, is made with reference to the law applicable thereto, and all principles of public policy involved therein, the statutes and the decisions of the courts relating thereto become as effectually a part of the contract as if they had been expressly referred to therein. If a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the act to regulate commerce or to the decisions of the courts or is opposed to public policy, they are in no better position than the parties to any other contract which violates the legal principles relating thereto. A carrier cannot inject illegalities into such contract and have it upheld on the ground of compelling necessity. Public policy has never permitted a carrier to procure its operating necessities by means of illegal contracts. The substance may be legally subject to contract, but the form of that contract must not be subject to illegal infirmities.

A carrier may lawfully get the coal that it needs so long as it does not violate the rights of or fail in its duty to the public. It must make this contract as it must make all others, keeping in view its duty to perform its public functions and to avoid injury or damage to its shippers by reason of unjust discrimination, undue preference, or unreasonable disadvantage growing out of such contract or the performance thereof. If a contract for fuel covers such supply as the carrier reasonably needs for its operation, and a period of car shortage comes, it can use its equipment to procure its fuel even though it thereby deprives shippers along its line of desired use thereof. As before observed, however, this right to so use its cars rests not upon the ground of private contract, but upon the public necessity that it have fuel. But if a carrier had a contract for more cars of fuel per day than it needed, neither such contract, nor considerations of public policy which recognize the public necessity for fuel, would justify it during a period of car shortage in using its equipment for a superfluous supply

when such equipment was demanded and needed by the shippers and the public.

It should be borne in mind that this question of car distribution is of importance only during periods when the carrier is unable to furnish all the cars desired by shippers. Generally speaking, this inability so far as coal shipments are concerned prevails during about four or five months of the winter season, when the demand for coal is greatest and the prices of coal the highest. During the other portion of the year carriers generally have a surplus of idle coal cars.

In Railroad Commission of Ohio *vs.* H. V. Ry. Co., *supra*, the Commission held that privately owned or leased cars and cars of foreign railways sent for foreign railway fuel must be assigned to the parties by whom owned or leased, or to whom consigned, but that all such cars must be counted against the distributive shares of such parties. Any other holding would open the door to unjust discrimination between shippers of commercial coal, for it must be remembered that cars of foreign railway fuel are commercial shipments in so far as the carrier transporting them for another carrier is concerned. Such shipments may not be given discriminatory or preferential rates.

The transportation by a carrier of its own fuel over its own lines presents a somewhat different question. Conditions and circumstances vary in different localities, but where a carrier contracts for fuel coal with certain mines located on its lines and served by it, which also compete with other mines similarly located, in the sale of commercial coal, the carrier may not unjustly discriminate in favor of the mine that accepts its proffered contract and thus work undue prejudice against the mine that does not accept such contract. Conceding fully the right of the carrier to use its equipment for the purpose of securing its own fuel supply, even though shippers at the same time desire the use of that equipment, and conceding the right of the carrier to secure its fuel supply either from mines which it owns or those whose entire output it purchases, we are led to the conclu-

sion that where a carrier purchases a portion of the output of a mine which is competing with other mines on its lines in commercial markets it may not discriminate in favor of such mine by failing to count against it in the distribution of cars those cars which it furnishes to that mine for its own fuel.

In these cases we think that as to privately owned or leased cars and foreign railway fuel cars the rule laid down in Railroad Commission of Ohio *vs.* H. V. Ry. Co., *supra*, should apply. We think that the Chicago & Alton Railroad Company has a right to confine the hopper-bottomed cars referred to to the hauling of its fuel supply, but that they, together with all other cars used by the defendants upon their own lines for transportation of their own fuel supply, should be counted against the distributive share of the mine or mines to which given, except in cases where the carrier owns or purchases the entire output of the mine for its fuel supply.

An order will be entered accordingly.

EXHIBIT C.

In Re Assignment of Freight Cars.

June 11, 1920.

By Senate Resolution No. 376 the Interstate Commerce Commission was directed to inform the Senate upon what authority, if any, its order of April 15, 1920, entitled "Notice to carriers and shippers" was issued.

Prior to 1907 it was a common practice for the railroads to deliver to coal mines cars privately owned or leased, foreign railway fuel cars and cars for the carrier's own fuel loading, accordingly as the cars were consigned or assigned and as the railroad had contracts for purchase of fuel coal, and to refrain from counting or charging such cars against the distributive shares of the mines to which they were given. In other words, all such cars were given to the mines for which they were intended and such mines were given in addition their full share of the other cars available for distribution. This practice was complained of as unreasonable and unduly prejudicial and in R. R. Com. of Ohio *et al vs.* H. V. Ry. Co., 12 I. C. C. 398, decided July 11, 1907, the Commission held that privately owned or leased cars, and foreign railway fuel cars sent on to the line by other railway companies for loading with fuel coal for the use of such other railway companies, should be given to the mines to which they were consigned or assigned but must be counted against the distributive shares of the mines, and that if such specially consigned or assigned cars equalled or exceeded the distributive share of a mine receiving them it should have no additional cars, and if the specially consigned or assigned cars did not equal the distributive share of the mine to which given it should be given additional cars only sufficient to make up its distributive share.

In the report in this case it was pointed out that in U. S. *ex rel* Pitcairn Coal Co. *vs.* B. & O. R. R. Co., 165 Fed. 113, a similar decision was made as to private cars and a

contrary decision as to foreign railway fuel cars, but that in Logan Coal Co. *vs.* Penna. R. R. Co., 154 Fed. 497, it was held that such foreign railway fuel cars should be counted against the mines to which they were consigned.

Among other considerations mentioned in the Commission's report was the fact that a railroad company would not send its cars on to the lines of another railway company even for its own fuel supply if they were to be diverted from that intended use and distributed among others than those to whom they were consigned for loading to various destinations on the lines of other carriers, thus rendering the fuel supply of the carrier sending the cars uncertain and depriving it of the use of its equipment.

In Traer *vs.* Chicago & Alton R. R. Co., 13 I. C. C. 451, decided April 13, 1908, the same questions were presented that had been presented in R. R. Com. of Ohio *vs.* H. V. Ry. Co., *supra*, and the additional question of the reasonableness of the carrier's failing to count against the mines to which they were delivered cars for loading with its own railroad fuel. The Commission followed the decision in R. R. Com. of Ohio *vs.* H. V. Ry. Co., *supra*, and in addition held that the cars used by carriers on their own lines for transportation of their own fuel supply may be given to the mine or mines from which such fuel supply is received, but that if such mine or mines also ship commercial coal fuel cars so supplied must be counted against the mine or mines under the rule laid down in R. R. Com. of Ohio *vs.* H. V. Ry. Co., *supra*.

In this case it was said that if a contract for fuel covers such supply as the carrier reasonably needs for its current operation and a period of car shortage should come it could use its equipment to procure its fuel even though it thereby deprived shippers of desired use thereof; that this right to so use its cars did not rest upon the ground of private contract but upon the public necessity that the railroad must have fuel; but that neither contract nor considerations of public policy which recognized the public necessity for fuel would justify the carrier during a period of

car shortage in using its equipment for a superfluous supply of its own fuel when such equipment was demanded and needed by the shippers and the public. Recognizing the right of the carrier to secure its fuel supply either from mines which it owns or those the entire output of which it purchases, it was held that where the carrier purchases a portion of the output of a mine which is also producing commercial coal it may not discriminate in favor of such mine by failing to count against it in the distribution of cars those cars which it furnishes to that mine for its own fuel.

In Rail & River Coal Co. *vs.* B. & O. R. R. Co., 14 I. C. C. 86, decided June 2, 1908, the rule laid down in R. R. Com. of Ohio *vs.* H. V. Ry. Co., *supra,* was again followed, and it was said that the ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; that the ownership of a private car or the possession of a foreign railway fuel car gives to a coal operator no preferred right to have it occupy a carrier's sidings or tracks as against a system car loaded by another operator, or to have it handled in trains in preference to a system car, and that when any of these general facilities are insufficient to move all the traffic offered no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines.

In Interstate Com. Com. *vs.* Ill. Cent. R. R. Co., 215 U. S. 452, decided January 10, 1910, the Supreme Court of the United States sustained the decision of the Commission in R. R. Com. of Ohio *et al vs.* H. V. Ry. Co., *supra,* and in Traer *vs.* Chicago & Alton R. R. Co., *supra,* and held that the act to regulate commerce delegated to the Commission authority to determine on complaint the question of distribution of coal cars, including the carrier's own fuel cars, in times of car shortage as a means of prohibiting undue preferences and unjust discriminations.

In Hillsdale Coal & Coke Co. *vs.* P. R. R. Co., 19 I. C. C. 356, decided March 7, 1910, the above decision of the

Supreme Court was referred to in pointing out that the orders of the Commission with respect to the distribution of coal cars by interstate carriers remained unaffected by attacks that had been made upon them in the courts, and that further consideration of these questions in connection with this group of cases had confirmed the conviction that the general principles underlying the disposition made of previous cases were both sound and just. The rule applied by the carrier in the Hillsdale Case was described, its effect was explained, and it was condemned as giving undue advantage in distribution to certain mines and as contrary to the previous decisions of the Commission. In a supplemental report in this case, 23 I. C. C. 186, reparation was awarded for damages resulting from the discrimination which had been practiced and found.

In Penna. R. R. Co. *vs.* Clark Coal Co., 238 U. S. 456, decided June 21, 1915, the Commission's award of reparation in Hillsdale Coal & Coke Co. *vs.* P. R. R. Co., *supra*, was sustained by the Supreme Court notwithstanding the fact that an action had been brought in a state court on the same subject before the Commission had made its award of reparation. The Supreme Court held that where a complaint involved practices of carriers in distributing cars for interstate shipments no action is maintainable in any court for damages alleged to have been inflicted thereby until the Commission has made a finding as to the reasonableness of such practices.

In the Commission's report of June 9, 1914, to the Senate and House of Representatives in Coal and Oil Investigation, 31 I. C. C. 193, it said at page 218:—

> "As to actual distribution of cars in accordance with the relative ratings of the mines, the opinion of the Commission is clearly set forth in Traer *vs.* C. & A. R. R. Co., 13 I. C. C. 454, and it was sustained by the Supreme Court of the United States in 215 U. S. 452 and 479. Formerly, few of the roads counted against the mine ratings company fuel cars (*i. e.* cars to be loaded with the carrier's own fuel); private

cars (*i. e.* cars owned or leased by coal companies); or foreign consigned cars (*i. e.* cars delivered by foreign roads for loading at particular mines). In the case just cited, the Commission ruled that all three classes of cars should be counted against the ratings as well as those furnished for commercial loading. In cases where the carrier takes the entire output of a mine, however, it has been considered permissible to deduct the number of cars delivered to that mine from the available supply before prorating among mines shipping commercial coal, or both commercial and railroad coal."

The rule of law on this subject thus established remained the controlling rule for carriers generally, and apparently without friction or controversy, until during the war and under the rules of the Fuel Administration, including its zoning system, and while the roads were under federal control, the rule was changed and the use of assigned cars for loading with railroad fuel was abandoned. This change was followed by the imperative necessity of railroads resorting to confiscation of coal in transit in order to keep their roads in operation. In many instances the coal was confiscated at the mouth of the mine. Those familiar with these subjects are apparently unanimous in saying that the practice of confiscation is attended by more evils than is the practice of assigned cars for railway fuel.

When federal control terminated there was in effect on all roads under federal control a set of rules that had been formulated by the Railroad Administration after consultation with a committee of the National Coal Association, and in order that there might not be confusion because of different lines of action being followed by different individual roads the Commission on March 2, 1920, issued a notice to carriers and shippers recommending that until experience and study demonstrated that other rules would be more effective and beneficial the uniform rules as con-

tained in the Railroad Administration's Car Service Section Circular CS-31 (Revised) be continued in effect.

With the suspension of the activities of the Fuel Administrator and regulations which he had prescribed some railroads that did not have more than two or three days' supply of coal and that were and for some time had been securing their necessary fuel supply by confiscation at the mouth of the mines were sued for damages on account of such confiscation, injunctions were sought in state courts against the practice of confiscation, and when it was learned that the carriers were contemplating return to the use of assigned cars injunctions were sought in state courts against the same carriers restraining them from using assigned cars. Numerous informal conferences were had between the Commission and representatives of the coal operators and representatives of the railroads in an effort to find some way by which the carrier could be assured of a fuel supply without the use of assigned cars or resort to confiscation. A conference was arranged between a committee representing the railroads and a committee representing the National Coal Association for the purpose of devising, if possible, some plan that would effect that purpose but no concrete or definite suggestion to that end resulted. Transportation conditions in the country were serious. Railroads that were unable to meet the demands upon them for transportation would be wholly unable to function if they could not secure coal and many of them had not more than two or three days' supply.

Rule 8 of the Railroad Administration's rules which the Commission had recommended be adhered to until experience and study demonstrated that some other rules would be more effective and beneficial was as follows:—

> "8. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned' cars."

It will be noted that under this rule private cars, some of which are owned and used by coal operators, and cars assigned to the mines by the Car Service Section of the Railroad Administration for railroad fuel or for other purposes were designated and treated as "assigned" cars. All other cars were designated and treated as "unassigned" cars.

Rules 9 and 10 of the Railroad Administration's rules were as follows:—

> "9. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply prorated to the other mines, based on a revised percentage by reason of such elimination.
>
> "10. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share."

It will be noted that under these rules the "assigned" cars were treated in the same manner as railway fuel cars were treated under the Commission's decisions in the cases hereinbefore cited.

Under the conditions that have been briefly outlined the Commission on April 15th, 1920, changed its recommendation of March 2, 1920, and recommended that until further experience and study demonstrated that other rules will be more effective and beneficial the Railroad Administration's rules be continued in effect except that rule 8 should be amended to read:—

> "8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in R. R. Com. of Ohio,

et al. vs. H. V. Ry. Co., 12 I. C. C. 398, and Traer *vs.* Chicago & Alton Railroad Co., *et al.*, 13 I. C. C. 451, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned' cars."

The Commission also expressed the opinion that an emergency existed requiring immediate action and in the exercise of the authority conferred by paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, it suspended the operation of the then existing rule 8 and directed the observance of rule 8 modified as above, effective April 16, 1920, and until further direction or order of the Commission.

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, declares it to be the duty of every carrier by railroad to make just and reasonable distribution of cars for the transportation of coal among the coal mines served by it whether located on its line or lines or customarily dependent upon it for car supply, and to maintain and apply just and reasonable ratings of such mines during any period when the supply of cars available for such service does not equal the requirements of the mines, and to count each and every car furnished to or used by any such mine for transportation of coal against the mine, and provides a specific penalty for failure or refusal to comply with these requirements.

Paragraph (5) of section 1 of the interstate commerce act, as amended by section 400 of the transportation act, 1920, provides that charges made for any service rendered or to be rendered by carriers subject to the act shall be just and reasonable. The act does not attempt to define in detail what is a just and reasonable rate, fare or charge, or what is a just and reasonable distribution of cars or rating of mines. The Commission is authorized to determine what is a just and reasonable charge for transportation or what are just and reasonable rules for distribution of cars or rating of mines.

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission whenever it is of opinion that shortage of equipment, congestion of traffic or other emergency requiring immediate action exists in any section of the country, to suspend the operation of any or all rules, regulations or practices then established with respect to car service for such time as may be determined by the Commission, and to make such just and reasonable directions with respect to car service as in its opinion will best promote the service in the interest of the public and the commerce of the people. The Commission's direction of April 15, 1920, was issued under authority of that paragraph.

The Commission is of opinion that paragraph (12) of section 1 of the interstate commerce act does not change the rule of law laid down in the Hocking Valley and Traer Cases, *supra*. The paragraph states in statutory form that which had theretofore been the law pursuant to the decisions of the Commission and of the Supreme Court of the United States.

No other definite rule or practical plan has been suggested by the interested parties in the many conferences that have been had on this subject. No rule other than that laid down by the Commission and sustained by the Supreme Court had been presented or tried after the decision of the Supreme Court, hereinbefore cited, until, as stated, the rule was changed under war conditions when the railroads were under federal control and the production, distribution and marketing of coal was under a war time federal administration. The passing of the roads from federal control and the suspension of the operation of the Fuel Administration's rules, together with the transportation conditions and shortage of fuel on hand, created an emergency in which the Commission acted in accordance with its best judgment. Both before and since that action was taken parties interested in or affected thereby have been freely invited to suggest some workable con-

crete plan under which the railroads can get a dependable supply of the quality of fuel adapted to their uses which can fairly be substituted for the rule to which some objections have been made. No one has suggested such a substitute rule. The nearest approach to it has been an expressed belief that a form of preferential contract could be devised under which the contracting railroad would have first call upon the output of a mine but so far as we are advised no such form of contract has been framed. It seems not inappropriate to say that the coal operators are not able to entirely agree among themselves as to the advantages or disadvantages of the assigned car practice.

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission to direct priorities in transportation. If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to that for railway fuel, as was done when priorities were issued by the President's priority agent during the war.

Copies of United States Railroad Administration's Car Service Section Circular CS-31 (Revised) and of the Commission's direction of April 15, 1920, are appended hereto and made a part hereof.

EXHIBIT D.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of March, A. D. 1921.

No. 12530.

In re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

The matter of the distribution of cars among coal mines being under consideration,

It is ordered, That the Commission upon its own motion enter upon an investigation into and concerning the reasonableness and propriety of the present car distribution rules in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to prescribing such just and reasonable rule or regulation as may appear to be necessary.

It is further ordered, That copies of this order be served upon all carriers by railroad in the United States subject to the Interstate Commerce Act, and that notice of this order be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission:

GEORGE B. McGINTY,

[SEAL] *Secretary.*

EXHIBIT E.

Assigned Cars for Bituminous Coal Mines.

No. 12530.

In re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

Submitted March 2, 1923. Decided June 13, 1923.

1. Paragraph (12) of section 1 of the interstate commerce act *held* not in terms to prohibit the practice of assigning cars for railway fuel and private cars to coal mines under the limitations fixed in R. R. Com. of Ohio *vs.* H. V. Ry. Co., 12 I. C. C., 398, and Traer *vs.* C. & A. R. R. Co., 13 I. C. C. 451. Assignment of Freight Cars, 57 I. C. C. 760, followed.
2. The practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous coal mines in excess of the ratable share contemporaneously distributed to bituminous-coal mines upon their lines which do not receive assigned cars, found for the future to be unjust and unreasonable, and unduly and unreasonably prejudicial to mines not receiving assigned cars and unduly preferential of mines which are furnished such cars in excess of the ratable proportion. Cars specially placed by order of the commission under the provisions of paragraph (15) of section 1 of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires.

Henry Wolf Biklé, J. C. Bills, W. S. Bronson, H. T. Dick, O. W. Dynes, R. V. Fletcher, August G. Gutheim, W. R. McFarland, W. A. Northcutt, H. R. Preston, C. J. Rixey, C. M. Sheafe, Jr., D. Lynch Younger, F. M. Rivinus, Frank W. Gwathmey, and J. H. Fishback for respondents.

Frederic L. Ballard and Jas. W. Carmalt for private coal-car owners.

Butler, Lamb, Foster & Pope, E. S. Ballard and Carl D. Loos for National Coal Association; A. M. Liveright for Central Pennsylvania Coal Producers' Association; L. C. Boyle and George N. Brown for Southern Ohio Coal Exchange; R. W. Ropiequet for Illinois Coal Traffic Bureau; and Eugene McAuliffe for Union Colliery Company, King Harlan Coal Company, Union Electric Company, Detroit Edison Company, and Milwaukee Electric Railway & Light Company.

J. J. Kintner for United Mine Workers of America, District No. 2; Albert L. Vogl and Harry F. Nash for Colorado & New Mexico Coal Operators' Association; Jonas Waffle for Indiana coal operators; and S. C. Higgins for New River Coal Operators Association.

REPORT OF THE COMMISSION.

AITCHISON, *Commissioner:*

This is a proceeding of investigation upon our own motion, entered upon March 22, 1921, with respect to the reasonableness and propriety of the present car-distribution rules of the respondents, all the steam-railroad carriers subject to our jurisdiction, in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to prescribing such just and reasonable rule or regulation as may appear to be necessary. Later, we instituted another proceeding of investigation, No. 13896, *In Re* Rules Governing Ratings of Coal Mines Other Than Anthracite and Distribution of Cars to such Mines, which brought before us as to the same respondents the propriety, justness, and reasonableness of the existing mine-rating rules for the distribution of cars as between mines of the class indicated in the title of that proceeding. For procedural purposes the two investigations were consolidated,

and a great amount of testimony of wide scope was taken, applicable as might be to one or the other or both of the consolidated proceedings. Thereafter we severed the two proceedings and No. 12530 has been submitted for determination, while No. 13896 remains unsubmitted.

Essentially involved is the practice of the carriers as to what are commonly known as assigned cars for the loading of coal. Throughout the hearing the testimony dealt with the practices of the railroads using bituminous coal for fuel, and our present determination will likewise be so limited. References to coal herein may be taken as meaning bituminous coal, unless the context shows that anthracite was intended to be included. The inquiry necessarily involves the right to make an assignment or designation of certain cars to specific mines for definite shippers or consignees, and the rule to be observed in times of car shortage in counting such cars in the distribution of equipment among the various mines upon the railroad or a division. The propriety of the practice raises the questions as to whether it is in terms forbidden by law; and if not so proscribed, whether the practice is just and reasonable and otherwise conforms to the tests of the interstate commerce act. Three classes of cars are involved: (1) System cars, or cars of railroad ownership, set for loading upon the line of the owning carrier or such as may be on its line of railroad and not owned by some specific shippers or restricted as to use; (2) cars for foreign railway fuel, which are delivered to another carrier consigned to particular mine operators for loading with fuel for the use of the delivering carrier and return to it; and (3) private cars, which include cars owned or leased or subject to the exclusive control of particular persons, not carriers by railroad, who deliver them to the railroad for placement at designated mines for loading and subsequent transportation as desired by the private-car owners. The coal to be transported in the private cars may or may not be intended eventually to be used for railroad fuel.

Counsel for respondents thus summarize the manner in

which assigned cars are placed and how they are counted, in connection with other cars, in determining the cars to which mines are entitled when, by reason of car shortage, it is necessary to distribute the available equipment on a basis less than the aggregate of orders based on the respective mine ratings:—

> "Assigned cars must be placed at mines to which assigned.
>
> "If the number of assigned cars exceeds the number of cars to which the mine is that day entitled under the rate of coal car distribution, the mine is not entitled to any additional cars for commercial coal loading that day.
>
> "If the number of assigned cars does not equal the number of cars to which the mine is that day entitled under the rate of coal car distribution, the mine shall be given enough system cars in addition to bring its total placements that day up to the number to which it is entitled."

Throughout this report the term commercial mines will be understood as referring to a mine which does not receive assigned cars.

As to each of these three classes of assigned cars the issue is presented whether the law in terms forbids the present practice of the respondents, and if not, whether we should find upon the record that the present practice is in any respect unjust and unreasonable or otherwise in violation of any provision of the interstate commerce act. In the consideration of these questions, we should have in mind the provisions of paragraphs (10), (11), (12), and (14) of Section 1. For convenience, these paragraphs are stated in the margin.* Paragraph (1) of section 3 also must be considered.

* (10) The term "car service" in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of

Paragraph (12) was the fourth paragraph of section 402 of the transportation act, 1920, and thus was added to and became a part of section 1 of the interstate commerce act, February 28, 1920. It will be necessary to bear in mind the requirement found in paragraph (6) of section 1, which in effect may be said generally to impose the duty upon all common carriers subject to the provisions of the act to establish, observe, and enforce just and reasonable transportation regulations and practices. It will also be essential to have before us paragraphs (15), (16), and (17) of section 1 of the act, which permit us in times of emergency to suspend the operation of any or all of the rules, regulations, or practices then established for such time as we may determine, and to give necessary directions as to car service so as best to promote the service in the interest of the public and the commerce of the people, and authorize us to give preference and priority in transportation, embargoes, or movement of traffic under per-

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property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act.

(11) It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations or practices.

mits, at such time and for such periods as we may determine. The powers conferred upon us in the three paragraphs last mentioned have been exercised repeatedly.*

The respondents have proposed for approval a code of rules as to mine ratings and car distribution. As to the assignment and counting of private cars and cars for railroad fuel, their proposal is found in the following suggested rules:—

> "(8) Private cars, such cars as are assigned to mines for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in R. R. Commission of Ohio, *et al. vs.* H. V. Ry. Co., 12 I. C. C., 398, and Traer *vs.* Chicago & Alton Railroad Co. *et al.*, 13 I. C. C. 451, and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned' cars.
>
> "(9) If the number of assigned cars placed at a mine during any period, as provided in rule 8, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply prorated to the other mines, based on a revised percentage by reason of such elimination.
>
> "(10) If the number of assigned cars placed at a mine during any period, as provided in rule 8, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share."

The rules proposed have the general support of the respondent carriers. They are opposed in their entirety by many associations of mine operators and representatives

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* 34th Annual Report of Commission, page 11; 36th Annual Report of Commission, page 9.

of mine labor. The National Coal Association, an organization with a large and widespread membership of bituminous-mine operators throughout the United States, opposes the rules in their application to railroad fuel, but takes no position as to the assigned private cars.

I.

The rules proposed are the same as those in effect when the present proceeding was instituted, upon the lines of respondents which followed the practice of assigning cars, except for the addition of the words "and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission," in the first rule quoted. It seems to be taken by all parties that the rules quoted, so far as they relate to railroad-fuel cars, expressly promulgate the practice which was put into effect by the carriers following our decision in R. R. Com. of Ohio *vs.* H. V. Ry. Co., *supra*, and in Traer *vs.* C. & A. R. R. Co., *supra*, which we will hereinafter refer to as the Hocking Valley case and Traer case, respectively. The railroads, proponents of the rules quoted, rely upon the authority of those decisions and subsequent decisions applying or sustaining them; while the opponents of the rule contend that the proposals are distinctly counter to the mandate contained in paragraph (12) of section 1 as to the distribution and counting against the mine of all cars furnished or used for the transportation of coal. The opponents of the proposed rules also contend that the assignment of cars as contemplated is an unjust, unreasonable, and unjustly preferential and prejudicial practice in violation of paragraph (6) of section 1, and paragraph (1) of section 3 of the act.

The question of the legality of the practice of assigning cars for railroad fuel substantially in the method outlined in the proposed rules was so carefully considered by us in Assignment of Freight Cars, 57 I. C. C. 760, that but for an attack upon the authority of that report as a precedent

we would not deem it necessary to further examine the matter, as there has since been no change in the statute law and the weight of judicial authority has supported the construction we there placed upon paragraph (12) of section 1. But the protestants have pointed out, properly, that the report cited, made in response to a resolution of the Senate of the United States, was necessarily of an *ex parte* character, and we have accordingly permitted all parties to be heard fully upon this basic question.

A brief review of our previous decisions involving this subject will be helpful.

Prior to 1907 the railroads commonly delivered to coal mines cars privately owned or leased, foreign railway-fuel cars, and cars for the carriers' own fuel loading, according as the cars were consigned or assigned and as the railroad had contracts for purchase of fuel coal. It was the usual practice to refrain from counting or charging such cars against the distributive shares of the mines to which they were given. All such cars were given to the mines for which they were intended and such mines received in addition their full share of the other cars available for distribution. Thus the cars assigned were not counted against the mine, as the phrase commonly ran.

The practice of the carriers in not counting foreign railway-fuel cars and private cars against the mines to which consigned or assigned was brought before us by complaints filed by the Railroad Commission of Ohio against the Hocking Valley Railway Company and the Wheeling & Lake Erie Railroad Company, respectively, which were disposed of together. The second case involved the so-called private cars, claimed to have been bought by certain coal operators, which were not included in or charged against the percentages in distribution of cars to coal-mining companies. Both complaints put in issue the practice of defendants in permitting the assignment of foreign railway-owned fuel cars consigned to certain coal companies with which the foreign railway had contracts stipulating for the furnishing of cars, and fail-

ing to count them against the mines. The basis of both complaints was unjust discrimination under the law as it then stood. And, although the right of the commission to prescribe a regulation or practice in respect to transportation which was just, fair, and reasonable to be thereafter followed was adverted to, the basis of our decision was discrimination. Our decision, made July 11, 1907, has been cited. We held in effect that the private cars and foreign railway-fuel cars as described should be given to the mines to which they were consigned or assigned, but must be counted against the distributive share of the mines. If such specially consigned or assigned cars equaled or exceeded the distributive share of a mine receiving them, the mine should have no additional cars, but if not equal to the distributive share, it should be given only sufficient additional cars to make up its distributive share.

In the Traer case, April 13, 1908, we followed the Hocking Valley case, and further held that cars used by defendants upon their own lines for transportation of their own necessary fuel supply may be given in any numbers to the mine or mines from which such fuel supply is received, but if such mine or mines also ship commercial coal the fuel cars so supplied must be counted against the mine or mines. An order was made to carry the findings of discrimination into effect. Injunction proceedings brought against the commission by interested carriers resulted in a decree of the Circuit Court of the United States for the Northern District of Illinois enjoining the effect of the order so far as it required carriers to count their own fuel cars against the mine shares, but the order was sustained in other respects. Chicago & A. R. R. Co. *vs.* Interstate Commerce Commission, 173 Fed., 930. On appeals by the commission the Supreme Court reversed the decree of the lower court and held the act had delegated to us authority to determine on complaint the question of distribution of the carrier's own freight cars in times of car shortage as a means of prohibiting the undue preference and unjust discrimination forbidden by the act. Power

to make the order, and not the expediency or wisdom of it, was the essential issue before the court. Interstate Commerce Commission *vs.* I. C. R. R. Co., 215 U. S., 452, *id. vs.* C. & A. R. R. Co., 215 U. S., 479.

The rule laid down by us in the Hocking Valley case was followed in Rail & River Coal Co. *vs.* B. & O. R. R. Co., 14 I. C. C., 86, and in Hillsdale Coal & Coke Co. *vs.* P. R. R. Co., 19 I. C. C., 356. In the last-cited case a rule applied by the carrier was condemned as giving undue advantage in distribution to certain mines and as contrary to the decisions of the commission previously referred to, and in a subsequent report, 23 I. C. C., 186, reparation was awarded. The award of reparation was later sustained by the Supreme Court. Penna. R. R. *vs.* Clark Coal Co., 238 U. S., 456.

In our report to the Senate and House of Representatives in Coal and Oil Investigation, 31 I. C. C., 193, 218, we repeated the substance of what we had found in the Hocking Valley and Traer cases. We expressed the view that when the carriers should adjust their rules in accordance with the views of the commission as expressed in the cases cited (and others) no doubt many of the irregularities found to exist would be eliminated.

The rule thus limiting the permissible assignment of cars either privately or railroad owned without counting them against the distributive share of the mines was definitely established and remained in effect as a rule in a state of repose until the advent of Federal control over the railroads and over the production, distribution, and price of coal. That rule was substantially as found in rules 8, 9, and 10 proposed by the respondents, with the exception of reference to cars specially assigned by our order, which is a new addition. The rule was accepted as settled, and although never acquiesced in by commercial mine operators as settled on the right basis, was not the subject of any formal complaint to which our attention has been directed down to the period of Federal control.

The United States Fuel Administration put into effect a zoning system for the distribution of coal. About July 1, 1918, authority for use of assigned cars for railroad fuel was withdrawn, but the actual discontinuance was somewhat delayed pending some provision being made to take care of carriers' emergency needs when necessary. No change was made in the rule with respect to private cars. Effective October 10, 1918, the United States Railroad Administration promulgated a code of rules for rating tipple coal mines (other than anthracite) for car distribution purposes, known as Circular CS-31. rules 6, 7, and 8, of that circular provided:—

> "6. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned' cars.
>
> "7. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.
>
> "8. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its *pro rata* share."

This code of rules was superseded, effective January 10, 1920, by Circular CS-31 (Revised) and rules 6, 7, and 8, became rules 8, 9, and 10, but contained no change in substance.

The essential change effected by these circulars from the rules laid down in the Hocking Valley and Traer cases

was to withdraw the authority for the placement of railway-fuel cars on an assigned basis from the individual rail carrier and to lodge that power in the car-service section of the United States Railroad Administration. No change was made in the counting requirements as announced in the Hocking Valley and Traer cases. When Circular CS-31 was promulgated there was no general car shortage, and the effect was not apparent. By the fall of 1918, there was a car surplus which continued until the summer of 1919, and in the meantime the fuel administration had discontinued operation. A car shortage developed in the late summer, and numerous railroads found themselves short of coal. The railroad administration took the position that if an operator had a contract for the loading of railroad fuel, he would have to load on that contract preferentially and without assigned cars, or the coal would be confiscated at the tipple before it was commercially billed. This practice continued until the fall of 1919. Then the central coal committee under the railroad administration began to function and continued until the termintion of Federal control March 1, 1920. The central coal committee directed that cars for railroad fuel be placed in preference to cars for coal loading for other purposes. This was the status which existed at the time of the enactment of the transportation act, 1920, which, as we have seen, brought paragraph (12) into section 1 of the interstate commerce act, effective March 1, 1920.

On March 2, 1920, in a notice to carriers and shippers, we recommended that until experience and careful study demonstrated that other rules would be more effective and beneficial, and especially during the remainder of the early spring, the uniform rules as contained in the railroad administration's car-service section Circular CS-31 (Revised) be continued in effect. These rules made no provision for the assignment of cars for railroad fuel loading after the termination of Federal control. We had suggested that carriers and coal operators attempt to compose their dif-

ferences with respect to the matter of the carriers' fuel supply, but conferences to that end were unavailing. The supply of cars available for the transportation of coal was insufficient to meet the demand and carriers resorted to wholesale confiscations in order to protect their fuel needs. Injunction proceedings brought against the practice of confiscation in at least one case resulted in a decree adverse to the carrier.

On April 15, 1920, in a further notice to carriers and shippers, we amended the recommendation in our notice to carriers and shippers of March 2, 1920, to read as follows:

> "The Commission recommends that until experience and careful study demonstrate that other rules will be more effective and beneficial, the uniform rules as contained in the Railroad Administration's Car Service Section Circular CS-31 (Revised) be continued in effect, except that rule 8 as contained in said circular should be amended to read:
>
> "8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in R. R. Com. of Ohio *et al. vs.* H. V. Ry. Co., 12 I. C. C., 398, and Traer *vs.* Chicago & Alton Railroad Co. *et al.*, 13 I. C. C., 451, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned' cars."

Senate Resolution No. 376 was adopted May 24 (calendar day May 29), 1920. By it we were directed to inform the Senate upon what authority, if any, our order of April 15, 1920, entitled "Notice to Carriers and Shippers" was issued. In the preamble to the resolution the order of April 15, 1920, was set out in full. In our report in answer to that resolution, *Assignment of Freight Cars, supra*, on June 11, 1920, we reviewed our various decisions and those of the courts bearing on this question, and stated:

> "The Commission is of opinion that paragraph (12) of section 1 of the interstate commerce act does not

change the rule of law laid down in the Hocking Valley and Traer cases, *supra*. The paragraph states in statutory form that which had theretofore been the law, pursuant to the decisions of the Commission and of the Supreme Court of the United States."

The language of paragraph (12) of section 1 has remained unchanged. Although our construction of the paragraph was specifically brought to the notice of the Senate, in response to a call for information as to the authority for the issuance of our order, and although our action in this regard was reported to both the Senate and House of Representatives in the annual report which by law we are required to make to the Congress, there has been no legislation in the three years which have elapsed to correct any error of interpretation upon our part. A bill declaring that paragraph (12) carried a rule of equal proportionate distribution of cars to coal mines, introduced in the Senate in the Sixty-seventh Congress, first session, was not reported out of committee.*

If the statute in question is at all doubtful in construction, the construction adopted by this administrative agency in its enforcement, followed for many years, without any attempt of Congress to change it, even when a bill for that purpose was long pending before it, and without any challenge of its correctness by any other department of the Government, while not controlling, is not to be disregarded without the most cogent and persuasive reasons. Robertson *vs.* Downing, 127 U. S. 607.

During a period of acute car shortage in the summer of 1920 it developed that rule 8, as embodied in our notice of April 15, 1920, had been and was being applied by particular carriers in a manner inconsistent with and contrary

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* S. 2003, introduced June 6 (calendar day June 7), 1921. The bill sought to amend paragraph (15) of section 1 of the Act, by adding the following:—

Provided, That nothing contained in the foregoing subdivision shall authorize the Commission at any time to suspend, modify, cancel, alter, or amend the provisions of subdivision 12 of this section which require equal proportionate distribution of cars to coal mines.

to the principles applicable in the Hocking Valley and Traer cases, and that uncertainty and undue preference and prejudice resulted. Accordingly, on September 28, 1920, we issued service order No. 18, effective October 1, 1920, and reissued the rules laid down in our order of April 15, 1920, with the following proviso:—

> "*Provided*, That common carriers by railroad may not assign cars for their own fuel and fail to count such cars against the mine's distributive share unless the entire output of such mine is taken by such a carrier for a period of not less than six consecutive months."

This order remained in force until March 24, 1921, when it was canceled, as the emergency which had called it into effect had been measurably relieved. The investigation here under consideration was instituted simultaneously with the order of vacation.

The National Coal Association, protestant herein, contends that the first sentence of paragraph (12) is a broad requirement that every carrier shall make just and reasonable distribution of cars among mines at all times whether there be a car shortage or car surplus; that the duty of establishing rules which will effectuate such just and reasonable distribution is left with the carrier in the first instance, subject to review by us under the provisions of section 15. It is not disputed—in fact, it is contended—that under this sentence we would have ample power to prescribe the same rules as we did in the Hocking Valley and Traer cases. But that association contends that in the second sentence it is specifically provided that during any period when the supply of cars does not equal the requirements of the mines, it shall be the duty of the carrier to maintain and apply just and reasonable mine ratings, and to count each and every car furnished to or used by a mine for transportation of coal against the mine. The two provisions taken together, the application of ratings and the counting of every car, it is contended, require

that during periods of car shortage available cars must be distributed in exact mathematical proportion to mine ratings. It is insisted that the words "to count each and every car furnished to or used by any such mine for transportation of coal against the mine" do not have the restricted meaning attributed to them by respondents. It is argued that the counting requirement of the Traer and Hocking Valley rule did not mean a mere enumeration of cars for the purpose of ascertaining whether the mine receiving them may have additional commercial cars, but did mean that all cars shall be exactly prorated in accordance with ratings. This is so because in every case where the Traer rule was discussed or announced there was attached to the counting requirement a qualification that all assigned cars shall nevertheless be delivered to the mines to which assigned or consigned, plainly indicating that an unqualified counting requirement would have called for a pro rata distribution.

The respondents place themselves behind the position that paragraph (12) does not change the rule in the Hocking Valley and Traer cases, taken by us in our report to the Senate, Assignment of Freight Cars, *supra*. They do not find it necessary to give the words "and to count each and every car used for transportation of coal against the mine" a meaning that all cars shall be prorated, whether assigned or unassigned. They find a purpose on the part of Congress in importing these words into the act, of adding a legislative mandate and to give permanency to a rule which had theretofore been an administrative determination, made upon the facts as appearing of record in particular cases, and therefore subject to change by the same administrative tribunal as its ideas of policy might vary, or as the record in particular cases might require. Our well-known practice has been to regard such determinations as made only upon the facts and under the conditions presented in the particular record. It was clearly within the power of Congress to appdy at their convenience the rule, which, as is apparent from what has preceded, was a limitation upon a practice of the carriers long ex-

isting, which the carriers had claimed the right to perpetuate, and as against the perpetuation of which there stood merely an administrative finding of fact based upon facts as disclosed in records made some 13 years before, binding upon but a few out of the hundreds of railroads subject to the act. Up to the time of the enactment of the transportation act, 1920, our findings as embraced in the Hocking Valley and Traer cases had been bottomed upon the fact of discrimination, and we had not attempted to prescribe a rule as reasonable. We had no occasion to pass upon that question after the car-service amendment of 1917 was enacted* until the close of Federal control. It might well be that Congress found the rule to be reasonable, as well as nondiscriminatory, and that it intended to settle the policy that such cars must be counted against the distributive share, as that phrase was then understood, and to prohibit the placement of additional cars at mines for commercial loading if the assigned cars placed equaled or exceeded the *pro rata* share. The construction placed upon paragrph (12) as stated in our report to Congress is entirely consistent with this view.

We may briefly examine the legislative history of the provision in question. A comprehensive bill (S. 3288), intended to make amendments to the act to regulate commerce necessitated by the imminent return of the railroads from Federal control to their owners, undertook to prohibit the assigned-car practice in precise and detailed terms. (Section 34, page 76, of the bill as amended and agreed to by the Senate.) This bill in this respect had been strongly advocated by the National Coal Association, except that the association did not approve a proviso which would have given power to the proposed transportation board to assign railway-fuel cars. The association thereupon suggested to the chairman of the Committe on Interstate and Foreign Commerce of the House of Representatives, then considering H. R. 4378, that the committee incor-

* An act to amend an act entitled "An act to regulate commerce," as amended, in respect of car service, and for other purposes, approved May 29, 1917.

porate amendments to carry into the House bill the provisions of section 34 of the Senate bill, with the exception of the proviso mentioned. The substitute proposed was presented to the committee of the House by counsel for the association. (Hearings upon H. R. 4378 pages 2172-2191.) Subsequently the house committee called before it Commissioner Clark, then chairman of this commission. A portion of the examination of our chairman by the chairman of the house committee appears in the margin.*

The bill as reported to the House did not contain the amendments suggested by the coal association, but did contain the precise language contained in the first two sentences of paragraph (12), as heretofore quoted. In Report No. 456 to the House of Representatives on bill H. R. 10453, which became the transportation act, 1920, the committee said:—

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*THE CHAIRMAN:—Mr. Clark, are you familiar with the provision inserted in the Cummins bill with reference to coal-car distribution? They have a section devoted to it.

MR. CLARK:—I remember there is such a section, but at the instant I do not recall the particular provision.

THE CHAIRMAN:—It seeks to carry into the law the orders of the Director General now with reference to car distribution.

MR. CLARK:—That leads me to say that in the earlier days of the Railroad Administration this very question of refraining from counting against the distributive share of the mine the cars that were sent for the carriers' own fuel supply came up. Some members of the Director General's staff favored going back to the old practice of the railroads; others of them favored following the rule laid down by us and sustained by the Supreme Court. We were asked for information and advice on the subject. My understanding is that the rule adopted was based upon the principles laid down by us, and that they are following the practice of counting those cars against the distributive shares of the mines.

THE CHAIRMAN:—You would be in favor of legislation of that kind being incorporated in any bill, so as to make it a statutory matter and not really a matter of regulation?

MR. CLARK:—I can see no objection to it, although I do not see any crying necessity for it now, because I think that rule is almost, if not entirely, universal.

THE CHAIRMAN:—The idea expressed by the representative of the coal association was that when Federal control ended there might be a recurrence to the old practice.

MR. CLARK:—Well, I think that is the sound rule, and I think it is the right rule. It has stood the test of adjudication at the hands of our commission and at the hands of the Supreme Court of the United States. So I cannot see any possible objection to carrying it into the statute.

"* * * Originally the term 'car service' included 'the movement, distribution, exchange, interchange, and return of cars used in the transportation of property.' As amended the term is made to include the use, control, supply, movement, distribution, etc., not only of cars, but of locomotives and other vehicles. It is further extended to include 'the supply, movement, and operation of trains by any carrier by railroad subject to this act,' and so require every carrier by railroad 'to furnish safe and adequate car service.' In a recent decision of the Supreme Court of the United States it was held that under the commerce act the commisison does not have the authority to order a common carrier to supply itself with certain cars. The pending bill gives the commission such authority.

"The same section makes it the duty of every common carrier, or railroad, 'to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine.' During Federal control such a rule has been followed by the Director General and the committee follows the decisions of the Interstate Commerce Commission and the present practice and has put in form of law what had been enunciated as proper practice. (Report No. 456, page 17, 66th Cong., 1st sess.)

"Paragraph (12) of the amended section incorporates in the statute a rule laid down by the Commission and upheld by the Supreme Court as to just and reasonable distribution of coal cars among the mines, thus avoiding any possibility of the recurrence of the evil

of what is known as 'assigned cars' " (Report No. 456, page 27, 66th Cong., 1st sess.)

The only rule which had been laid down by the commission as to just and reasonable distribution of coal cars among the mines and upheld by the Supreme Court was that stated in the Traer and Hocking Valley cases, sustained in the Illinois Central and Alton cases, *supra*.

The Senate bill, which contained the amendments suggested by the protestant association, and the House bill which had not incorporated the amendments that association had suggested, went to conference. The conferees adopted the provisions of the House bill in this respect.

It is claimed that the chairman of the House committee and the chairman of this commission were "obviously at cross purposes" in their discussion, and that the chairman of the commission was in error in his understanding that the rule adopted by the director general's staff was based upon the principles laid down by the commission. Our chairman, however, was warranted in his statement by the provisions of Circular CS-31, Revised, already quoted, although the designation of cars to be assigned was made by the car-service section of the United States Railroad Administration, instead of by the particular carrier as previous to Federal control. This minor distinction in nowise impairs the general accuracy of the statement made by our chairman.

The words used in the second sentence of paragraph (12) "to count each and every car furnished to or used by any such mine for transportation of coal against the mine" were not new in this connection, but substantially the same words had been used in the Hocking Valley, Traer, and Hillsdale cases, *supra*, and in Royal Coal & Coke Co. *vs.* S. Ry. Co., 13 I. C. C., 440, 449, and in some of the court decisions. In none of those cases was it found necessary to give the words quoted the meaning of equivalency to *pro rata* distribution, or as inconsistent with the practice which followed our decisions in those cases. In fact, in the Hills-

dale case, we held that "all such (assigned) cars must be counted against the distributive share of the mine receiving them" (19 I. C. C., 364), and virtually substantial language was employed in the mandatory clauses of our order in that case. The words also had a widespread usage in railroad and traffic circles at the time of the enactment of the transportation act, and that usage was consistent with that expressed by us in our report to the Senate, *supra*. While, in the expression of the rule which originated in the Hocking Valley and Traer cases, the words "count against the mine" were continually being applied as a necessary term in the formula, it was always recognized that the rule with these words in it was not the equivalent of a requirement for equal proportionate distribution of cars assigned and unassigned, to coal mines. With this usage Congress was no doubt familiar, as we are.

The question here presented has been passed upon by the Federal courts in three cases. In Corona Coal Co. *vs.* Southern Ry. Co., 266 Fed., 726, and in Cleveland & Western Coal Co. *vs.* B. & O. R. Co., 283 Fed., 995, the District Courts of the United States for the Northern District of Alabama and Northern District of Ohio, respectively, expressed the opinion that the intent of Congress was to put into statutory form the rule theretofore expressed in the Hocking Valley and Traer cases. A contrary view was expressed by the Circuit Court of Appeals in the Fourth Circuit, in B. & O. R. R. Co. *vs.* Lambert Run Coal Company, 267 Fed., 776, reversing on this point the District Court of the United States for the Northern District of West Virginia, which had found upon this point in consonance with the Corona case. But the Circuit Court of Appeals was itself reversed as having no jurisdiction in the premises. Lamberts Run Coal Co. *vs.* B. & O. R. R. Co., 258 U. S., 377. While giving to the opinions of the Circuit Court of Appeals all the respect due to the deliberate findings of such a judicial tribunal, its determination of a question of law, made in a proceeding where no jurisdiction vested, and where the Government as a necessary party was absent, and was not heard upon the construction of the

statute, can not be accorded weight as determinative of this issue.

We therefore conclude that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act.

II.

Although the rules proposed for application during future periods of car shortage may not in terms be forbidden by law, we must determine whether in fact they are just and reasonable, as required by section 1, and whether they result in undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage in any respect whatsoever, forbidden by section 3 of the act. These questions may be considered together. First we will deal with the assigned car for railroad fuel, system and foreign line. At the outset we are led to repeat that we must deal with questions of this character upon the basis of the record as now developed. The decisions previously cited have left intact these questions as they are presented to us in the light of present-day facts.

Certain premises meet general acceptance in this record. It is recognized that the importance of the railroads in the distribution of coal and other commodities, and their general dependence upon bituminous coal in producing transportation, require that in some lawful way they may be assured of a steady supply of suitable coal. It is likeiwse generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires. There is no dissent from the proposition that confiscation of fuel coal by railroads is a practice to be avoided. It seems to be generally accepted that the public interest requires that the carriers shall not be subjected to unreasonable prices. Obviously the carrier should not be permitted to take advantage of a means provided by the

public to insure an uninterrupted movement of traffic, as a means to coerce an unreasonably low price for fuel.

There is enough bituminous coal in the ground in this country to more than supply the demands of all consumers for a long period. There are more than enough miners to produce coal for all purposes. There are more mines than is consistent with the most efficient use of equipment, and their aggregate capacity exceeds greatly the country's demand. The demands for coal are seasonal, and as a result we have frequent seasonal or local car shortages. In 1916, when we began to feel the effect of the war in Europe, we experienced widespread car shortages, resulting in an investigation by us on our own motion, Car Supply Investigation, 42 I. C. C., 657. The more recent general coal-car shortages and the steps taken to insure to carriers their fuel needs have already been adverted to. The aggregate time lost because of car shortages, local and general, is a considerable proportion of the whole of any recent elapsed period of time. And during each period of car shortage the practical problem of supplying the railroads with fuel has been presented sharply, and the meeting of the problem has been most troublesome, and has necessarily involved considerable general disturbance of production and transportation. The large proportionate demand for bituminous coal made by the railroads—nearly 28 per cent. of the total consumed and exported by the United States annually—adds to the difficulty of the situation.

The means employed by the railroads in securing coal for fuel purposes vary widely. Some carriers own mines from which they secure a large portion of their requirements; others contract for the entire output of certain mines for a definite period of time; and still others contract for a partial output on a day-to-day basis. Some secure their coal supply by the use of the assigned cars under the rules in the Hocking Valley and Traer cases, and others secure their fuel without assigned cars. According to the record, on October 1, 1922, the following Class I carriers and bituminous coal loading railroads not included in Class I were securing their fuel supply without the use of assigned cars:—

Arizona & Eastern.
Atchison, Topeka & Santa Fe.
Atlanta, Birmingham & Atlantic.
Atlantic Coast Line.
Beverly & Southern.
Boston & Albany.*
Buffalo, Rochester & Pittsburgh.*
Carolina, Clinchfield & Ohio.*
Cambria & Indiana.
Charleston & Western Carolina.
Chicago & Illinois Midland.
Cincinnati, Indianapolis & Western.*
Chicago & North Western.
Chicago, St. Paul, Minneapolis & Omaha.
Colorado Northern.
Cumberland.
Delaware, Lackawanna & Western.*
Duluth, Missabe & Northern.
Detroit & Mackinac.
Duluth, South Shore & Atlantic.
Elgin, Joliet & Eastern.*
El Paso & Southwestern.
Fort Dodge, Des Moines & Southern.
Georgia & Florida.*
Great Northern.
Green Bay & Western.
Huntingdon & Broadtop Mountain.
Lake Erie, Franklin & Clarion.
Lehigh & Hudson River.
Louisiana Railway & Navigation.
Lehigh & New England.*
Lehigh Valley.*
Litchfield & Madison.
Maine Central.
Minneapolis & St. Louis.
Mississippi Central.
Mobile & Ohio.
Monongahela.*
Montour.
New York, Ontario & Western.
Pittsburg, Shawmut & Northern.
Richmond, Fredericksburg & Potomac.*
St. Louis-San Francisco.
Staten Island Rapid Transit.
Seaboard Air Line .
Tennessee Central.
Toledo, Peoria & Western.
Union Pacific.
Union.
Utah.
Western Maryland.*
Montana, Wyoming & Southern.

The carriers indicated by an asterisk employed assigned cars in securing their fuel during the 1920 shortage.

Certain of these carriers, notably the Union Pacific, Great Northern, Chicago & North Western, Minneapolis & St. Louis, and Atchison, Topeka & Santa Fe, own mines from which they secure a considerable portion of their fuel. It will be helpful to state briefly as illustrative the practices of certain of the larger carriers which employ assigned cars in securing their fuel, and the justification they present.

The Illinois Central secured by means of assigned cars from 60 to 75 per cent. of its fuel requirements from the Madison Coal Corporation, of which it owns all of the stock. This coal corporation owns eight mines in Southern Illinois on the St. Louis division of the Illinois Central, and does not engage in commercial business. The balance of the carrier's fuel is secured by seasonal contracts of 30 days, or as needed during periods of car surplus. The

president of the railroad company testified that the assigned cars were essential for the following reasons. (1) They gave the carriers a regular and certain supply of coal in times of car shortage. (2) The coals from different fields are not of the same grade, which requires that certain adjustments be made in the locomotives. The Alabama coal is a different grade from that mined in southern Illinois, and again, the coal in different counties in Illinois has different burning qualities. (3) Unless the carriers can contract for a regular and suitable supply of coal, resort to confiscation becomes necessary. (4) Going into the spot market would increase the price of coal, not only to the carrier but to the consuming public as well. This carrier burns about 5,000,000 tons of coal per year, or from 250 to 320 carloads per day, and usually has on hand about 20 days' supply. During the winter it undertakes to store from 30 to 45 days' supply.

The Chicago Great Western owns a mine on the lines of the Illinois Central, and has provided itself with hopper bottom cars which are assigned to the mines to take care of its fuel needs. This road has facilities for unloading the cars into receptacles that elevate the coal for direct delivery to the engines.

The Pere Marquette consumes approximately 900,000 tons of coal per year, or from 45 to 60 carloads per day, secured largely from mines in eastern Ohio, Kentucky, West Virginia, and Pennsylvania. It solicits bids from about 500 coal producers. These bids are all on a standard specification, and contracts are made with a few operators whose offer is most advantageous, considering quality as well as price. Some three or four years ago it purchased 1,000 all-steel hopper-bottom self-clearing coal cars expressly to take care of its fuel requirements. It has installed modern fuel stations at all the large terminals to enable the economic use of self-dumping cars and avoid the necessary expense of shoveling the coal. The coal is dumped into either an elevated trestle or a hopper. During the summer months it stores about 100,000 tons, or

about one month's supply, to take care of its needs during the extreme winter weather. In 1921, it stored about 130,000 tons, or six weeks' supply. It estimates the cost of storing and picking up the coal at 70 cents per ton.

The position of the New England carriers is practically the same. They have no sources of fuel on their own rails, and are dependent upon mines in Pennsylvania and West Virginia located on the lines of other carriers. The New England carriers normally consume about 6,000,000 tons of coal per year. During the year 1920, due to abnormal market and transportation conditions, the New York, New Haven & Hartford bought large amounts of spot coal at high prices. Its fuel that year cost $45,700,000, equivalent to approximately 28.1 per cent. of the transportation costs. In 1921, its fuel bill amounted to $33,500,000, or approximately 25.7 per cent. of transportation costs. The New Haven customarily covers its requirements by contracts for the coal year. Its contracts are based on quality, prospects for regularity in supply, and price. The New England carriers have found it necessary to lay in a seasonal supply of fuel for protection against irregularity in mine loading as well as slowing up of transportation. They have facilities for seasonal storage of an aggregate capacity of 1,200,000 tons. The usual seasonal storage is approximately 800,000 tons, or 13 per cent. of their normal requirements. They have extensive facilities for seasonal storage, including yards with parallel tracks for ground storage, similar yards with trestles for dumping, bins and overhead movable cranes, facilities in connection with tidewater discharge plants and, where the winter is more severe, large covered bins. The cost of storage is estimated at from 50 to 60 cents per ton.

About 55 per cent. of the New Haven's coal is delivered direct to locomotive tenders through mechanical coaling stations at the more important terminals, which have storage capacity for several days. About 28 per cent. is delivered by locomotive cranes at the less important terminals. The remainder, 17 per cent., is delivered through outlying

points where locomotives lay out and where consumption does not justify either facility. The coaling points on the New Haven average one to every 29 miles, and on the Boston & Maine one to every 37 miles. These different conditions of unloading compel the movement of the proper type of car to each destination.

The assigned car, the New Haven claims, enables it to secure a uniform quality and grade suitable for its requirements and favorable to good service; permits the placing of contracts for yearly consumption at reasonable prices; requires the use of a minimum number of cars on consuming line in its fuel service, results in an increase in the number of cars available for commercial loading; reduces unloading costs, as the unloading facilities and types of cars are each adapted to the other; affords a greater opportunity for solid train movement of empties and loads; and affords a better standard of maintenance and equipment on account of system cars being more regularly at home. The New Haven claims that a railroad attempting to procure its fuel supply without the use of assigned cars is under serious disadvantages, which we will summarize. Overcontracting for fuel is required to safeguard against irregular supply; an excessive supply of coaling cars must be held with resulting heavy increase in per diem to consuming road; excessive switching costs to both originating and consuming lines are incurred in selecting proper types of equipment for railroad fuel; the unloading costs on the consuming line are excessive on account of different types of cars; greater unloading storage must be provided to meet seasonable requirements entailing higher handling costs; and the purchase of spot coal at higher prices or the confiscation of commercial coal or fuel coal consigned to another carrier is inevitable.

The New England carriers do not use assigned cars to secure their entire fuel-coal supply. Seemingly, in the absence of an order from us specifically authorizing the practice, they secure their fuel supply without assigned cars. Some of their coal moves by way of tidewater, and as-

signed cars are not placed at the mines for the loading of such coal.

The Baltimore & Ohio consumes from six to seven million tons of coal annually. During the four years preceding 1922 the coal consumed averaged 17 per cent. of the total production on its line. It contracts for its fuel supply with 44 operators, covering the entire output of 56 mines with an estimated daily tonnage of 23,438 tons. The large majority of these mines are located on the heaviest coal-producing divisions of the road. Approximately 14 per cent. of the coal consumed is delivered direct into the tenders of the engines. There are 17 divisions, with an average of five coaling stations to a division. The carrier owns 635 stoker-fired engines, 442 of which require a specially prepared coal, otherwise two firemen are necessary. A plan has been worked out through the use of the assigned car whereby coal produced in a certain territory will go to the same divisions continuously, and this, it is urged, results in increased efficiency. Any change in the assignment of coal lowers the efficiency of the motive power. With the assigned car the Baltimore & Ohio used an average of about two grades of coal on a division. During the strike period in 1922 it was necessary to use about 18 to 20 different grades, and the performance of the motive power was unsatisfactory. Several hundred thousand tons were stored when the car supply permitted without interference with or affecting the commercial distribution. The Baltimore & Ohio would encourage the storing of coal if the car supply is strong enough.

The Chesapeake & Ohio consumes about 2,500,000 tons of coal annually, of which approximately 300,000 tons are loaded direct on the engine tenders and 2,200,000 tons on cars. This carrier owns mines which supply 700,000 tons, and 1,500,000 tons are obtained under three-year contracts from seven different mines. High-volatile steam coal is used practically exclusively. Coal elevators of modern type are maintained at various locomotive terminals. No coal is stored, other than the small storage capac-

ity of the bins and coal elevators, the largest of which is 300 tons. The carrier estimates that 1,400 out of a total of 42,000 coal cars owned will be constantly required for securing its fuel, although prompt dumping reduces the number of cars held daily to approximately 1,200. Contracts are confined to a few mines which produce coal efficient for engine purposes. It is contended that if the contracts were spread over a number of mines an unduly large number of cars would be required to handle the fuel contracted for; the cost of assembling would be excessive; it would interfere with transportation functions; the responsibility for filling the requirements would be divided among too many people; and it would be practically impossible for the carrier to make an inspection of the coal.

There are no mines on the Grand Trunk from which it can obtain fuel, and it is dependent upon coal produced in the United States. To insure a supply of proper grade the Grand Trunk purchased 5,456 hopper-bottom self-clearing cars at a cost of $4,320,000. With the exception of 350 or 400, these are used largely for transporting its coal. Its requirements approximate 7,000 tons daily, or a little over 2,500,000 tons annually. The coal is obtained largely from its own three mines near Bellaire, Ohio, one on the Baltimore & Ohio and two on the Pennsylvania. About 10 to 15 per cent. of its supply is secured from mines in Nova Scotia, which is used at Montreal and points east. It has a contract with a mine on the Illinois Central in Illinois, and furnishes about 25 to 30 cars a day to the Illinois Central at Chicago for delivery at that mine. It has short-term contracts with other mines on the Buffalo, Rochester & Pittsburgh; Buffalo & Susquehanna; and Pittsburgh, Shawmut & Northern. Some of this coal is of poor quality, and equipment is not assigned for the loading thereof except to one mine on the Buffalo, Rochester & Pitsburgh, with which a yearly contract is made. It generally stores about 450,000 to 600,000 tons, about 90 days' supply, to guard against any slow-up in transportation caused by storm or congestion. The position of the

Grand Trunk is similar to that of other lines, that if it could not assign cars for its fuel it would be forced into the open market to purchase coal at an increased price, with no assurance of a steady movement of the supply.

The Chicago, Burlington & Quincy owns a mine in the southern Illinois district with a production of 4,200 to 4,500 tons per day. It consumes, on an average, about 13,500 tons per day. It contracts with other mines for the remainder of its coal. During slack periods, or when requirements are less, its own mine is closed down because the contract mines meet its requirements. It makes a general practice of storing a limited quantity, but regards it as uneconomical to store more than a reasonable amount. The estimated handling cost is about 25 cents per ton.

There is only one small mine on the Seaboard Air Line, and it obtains its coal from mines on other lines. It consumes about 103,000 tons monthly, about 40 per cent. of which is obtained from mines in West Virginia-Virginia territory on the Norfolk & Western, Interstate, and Southern Railways, and 60 per cent. from Alabama mines on the Frisco and Birmingham Belt. Its requirements are secured through part-output contracts made early in the spring for the year's supply beginning July 1. Since Federal control the greater portion of its coal has been secured without the use of assigned cars. Prior to Federal control it was the practice to assign coal cars to protect at least 75 per cent. and at times 100 per cent. of its requirements. It maintains seven operating divisions, with 23 major coaling stations, in addition to 45 smaller stations. Storage is provided at five points for approximately 100,000 tons, or one month's supply. The coal is either dumped directly on the ground or from a trestle.

The Southern under normal conditions obtains its supply under contracts covering the entire output from mines on its line in Virginia, Tennessee, Kentucky, Alabama, Indiana, and Illinois. It occasionally purchases coal for the Washington division from mines in West Virginia on the Chesapeake & Ohio and Baltimore & Ohio. It estimates its re-

quirements for the year ending January 30, 1923, as 5,871,522 tons. It endeavors to keep on hand a supply for about 20 days.

Some of the important carriers which use the assigned car for railway fuel at mines on their own lines have not presented any statement of the reasons which have impelled them to adopt or maintain the practice. Among such carriers may be mentioned the Pennsylvania, New York Central, and Louisville & Nashville. Many of the important carriers which supply cars to coal-loading railways for assignment to mines located thereon have not submitted any statement as to their particular situations.

The position of the opponents of the assigned car for railway fuel may briefly be summarized as follows: (1) The practice reduces the car supply at commercial mines on certain divisions, since the assigned cars are taken into account in determining the number of cars to which each division as a whole is entitled; (2) it results in a wastage of cars, because a mine loading assigned cars usually has more cars standing over than a mine loading commercial coal; (3) it produces great and harmful inequalities in working time in nearby competing mines; and (4) it affects the price of the coal purchased by the carriers injuriously to the mine operators, and that it results in the shipper buying transportation preference with coal, and the carrier buying coal with transportation preference. These contentions will be dealt with separately.

The effect of the use of the assigned car for railway fuel is to diminish to some extent the supply of cars placed at commercial mines during periods of car shortage. The extent to which the practice causes a diminution in supply is in dispute; the mine operators opposing the practice consider it a serious matter, both because of its direct effect in limiting production, and because of the indirect effects upon their costs and labor supply, while the carriers minimize the result and even claim compensating advantages to the commercial mines because of the practice. Because of wide differences in the practices of the railroads, and the

many fluctuations due to changes in car supply, public clamor for coal, or service orders of the commission, it is extremely difficult to state in precise terms as to a division of a particular line what would have been the effect on the distribution of cars to commercial mines had no cars been assigned; and it is even more difficult to express in any arithmetical manner the result as to the carriers generally. There is much in the record on this subject, which must be weighed in the view of countervailing considerations. The estimates based on individual judgment in some instances indicate the increase in the commercial distribution would have been almost 40 per cent., at the height of the car shortage of 1922. Other testimony indicates a difference of from 10 to 30 per cent. Evidently the private assigned car figures in these estimates, as well as the railway fuel cars. The last column of the following table indicates the increased supply which commercial mines in the various districts on the Chesapeake & Ohio Railway would have received during the year 1920, if there had been a *pro rata* distribution of all cars, *i. e.*, commercial, system fuel, foreign fuel, and private.

	New River district.	Kanawha district.	Coal River district.	Logan district.	Kentucky district.	Total.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
Unassigned cars placed, per cent. of aggregate orders...	50.4	50.9	51.5	51.9	50.1	51.1
Per cent. of aggregate orders if all cars prorated.....	56.7	56.6	55.9	55.8	54.4	56.0
Increase in cars placed, if all prorated, per cent. of aggregate orders.....	6.3	5.7	4.4	3.9	4.3	4.9

In times of shortage, with a strong demand for coal, the orders may be taken as approximating the mine ratings. The percentages now to be quoted are in terms of the aggregate orders. During this same period, on an order for 26,429.1 cars, 25,509.7 cars were assigned for development of new mines, or under service order No. 9 of this commission. If these assignments had not been made, the percentage of unassigned cars placed would have increased from 51.1 to 52.3 of the orders. If the assignment for rail-

way-fuel and private cars had been abolished, and those cars prorated, the percentage would have further increased to 56. Without private-car assignments, had the private cars remained off the line, the percentage would have decreased from 51.1 to 48.5. If no assignments for railway fuel or of private cars had been made, the former class of cars being prorated to all mines and the latter being no longer on the line, the percentage would have decreased from 51.1 to 50.1. If the assignment for railway fuel had been abolished and the railway-fuel cars prorated to all mines, the percentage would have increased from 51.1 to 52.7.

The weakness of such a showing is that the orders by mines in times of shortage, taken as the base to which each of the percentages stated apply, which approximate the mine ratings, are notoriously far greater than the normal mine capacities, or the ability of the carrier to transport, or the country to consume bituminous coal, when taken in the aggregate. The ratings are merely the factors to be used in determining the relative car supply each mine is to receive, in times of shortage, whether the supply be 10 per cent. or 90 per cent. of the ratings. More significant would be a comparison of the number of cars which would be placed if all assigned cars were added to those distributed with the number in fact apportioned among the commercial mines. If the second line of percentages shown in the table above be compared with the first line, it will apear that the result of prorating the assigned cars (including private cars as well as those for railroad fuel) with the unassigned would have been to increase the supply of the commercial mines over the cars actually furnished by the following percentages of the cars in fact set:

New River district	12.5 per cent.
Kanawha district	11.2 per cent.
Coal River district	8.5 per cent.
Logan district	7.5 per cent.
Kentucky district	8.6 per cent.
Total	9.6 per cent.

In considering these averages it is to be remembered that the figures cover a calendar year, during a part of which there was no car shortage. As previously explained, cars for railroad fuel were assigned by order of the United States Railroad Administration during Federal control; from March 1 to April 15, when our notice to carriers and shippers became effective, the effective car-service rules made no provision for the assignment of railroad fuel cars. If confined to a period of time during which a car shortage prevailed, and during which the assigned-car practice was applied throughout, the percentage of increase in the supply to the commercial mines which would result from the abolition of the assigned-car practice would be greater than shown in the last preceding table. Further, as the statement covers entire fields, aggregated into single sets of comparative figures, the effect on different individuals doubtless varied. With some, the result of the change in method of apportionment of the assigned cars might be inconsiderable, but of greater importance to others than the mere statement of percentages might imply. The mines which receive a full car supply through the assignment practice are few in number as compared with the commercial mines, and the latter operates at but a fraction of their capacity. Therefore the disparity in treatment between individuals is far greater than is indicated by the process of recasting the supply in the manner indicated. The prorating of all cars equally would decrease the supply given the few mines much more in proportion than it would increase the supply of the remainder. But, if a preference exists, the fact that few receive it and that its abolition would not intrinsically greatly increase the benefits to the unfavored great majority of shippers, can not be urged as a justification.

A compilation based upon estimates made by the Baltimore & Ohio for four successive Thursdays in October, 1922, is to the effect that the commercial supply would have been increased by the following percentages of the cars

placed at commercial mines, if system fuel cars had been distributed ratably with unassigned cars.*

Division.	Oct. 5, 1922.	Oct. 12, 1922.	Oct. 19, 1922.	Oct. 26, 1922.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
Monongah	35.9	11.1	27.1	63.9
Connellsville	6.8	2.8	8.0	8.4
Wheeling	72.9	3.2	44.9	49.7
Cumberland	2.7	−1.4	−1.3	2.4
Pittsburgh	3.1	48.1	2.8	20.3
Charleston	5.9	3.4	13.8	7.5
St. Louis	3.0	18.6	12.9	3.4

No changes would have been made in the distribution in the Ohio River, Ohio, Toledo, Akron, and Newark divisions, as seemingly no cars were assigned in those divisions.

Evidence of bona fide contracts for the output of the mines is required by the Baltimore & Ohio before assigned cars for foreign fuel can be sent in. Approximately 25 per cent. of the total cars loaded on the Baltimore & Ohio are assigned cars. On Mondays in October, 1922, had assigned cars for Baltimore & Ohio fuel been eliminated the distribution to commercial mines would have been increased to any extent on four divisions only. The increases on the system as a whole ranged from 3.23 per cent. to 4.6 per cent. of the mine ratings. Assuming that the average tipple mine has a rating of 10 cars per day, and that the available cars had been equally distributed, the result would have been a daily increase in the car supply at the commercial mine of approximately 0.4 car, or about 10 cars a month. The weight to be given this showing is discounted by reason of the fact that Monday is practically always the

*The reduction in car supply for the Cumberland division October 12 and 19 which would result if all cars had ben pooled, is thus accounted for: The adjusted mine rating for assigned cars slightly exceeded the adjusted mine rating for unassigned cars. On the dates mentioned no assigned cars were placed on the Cumberland division. Dividing the number of cars placed, which were all on the unassigned basis, by the greater divisor gives a smaller number of cars as due the commercial mines, and brings about a nominal reduction in the cars to be allotted to them. The same method of computation was employed as to the other divisions shown.

day of best car supply on any carrier during times of shortage, and the day on which the effect of the assigned car upon the commercial mine would be at the minimum. But, in view of the inability of the commercial mine operator in such times to meet the demands for coal, the diversion of an average of a fraction of a car daily is not to be waived aside because it may seem inconsiderable as compared with an average rating of 10 cars, assumed for the illustration. In fact, with but a 40 per cent. car supply, the operator in the case assumed would receive but four cars a day on an average, and an increase of four-tenths of one car would be equivalent to increasing the car supply he receives 10 per cent., and would permit him to increase his output and supply one-tenth more coal to his customers.

If a foreign carrier were not permitted to assign its own cars to a coal-loading carrier, the latter would be under the primary duty of supplying cars at the mines. There would follow a reduction in the supply available for the commercial mines, because of the necessity for spreading the cars that were at hand over a wider field, unless the foreign carriers were compelled to participate in furnishing coal cars for the service. For that reason the carriers claim that such cars are a distinct advantage to the commercial operator. Whether this would ultimately be the fact must depend upon the determination of the duty of the participants in the through movement to supply appropriate shares of equipment necessary for the transportation. Without passing on the question whether the duty rests upon the carriers jointly (compare Huerfano Coal Co. *vs.* C. S. E. R. R. Co., 28 I. C. C. 502) or severally, in the aggregate the duty of providing an adequate supply of equipment rests upon the railroad carriers.

When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. Rates on Railroad

Fuel and Other Coal, 36 I. C. C. 1, 9; Divisions of Joint Rates on Railway Fuel Coal, 37 I. C. C. 265.

There is evidence which indicates that the assignment of cars for foreign-line fuel coal to a certain extent dislocates the car supply of the coal-loading line to the injury of the operator shipping commercial coal, because of the frequent disregard of the requirement that cars of one line sent to another line for fuel must be placed at the mines to which they are carded. Some coal-loading roads place such foreign-line fuel cars at the mines nearest the junction point at which received, and then place system cars at the mines which are to ship coal to the foreign line. This usually occurs when the home line is congested. The result is a material lessening of the already short car supply of the home line, as the car-service rules require that the foreign-line cars must be loaded to or in the home direction, and an equal number of system cars go to the foreign line with its fuel. Assigned foreign-line fuel cars sometimes replace an equal number of commercial cars which would otherwise be subject to *pro rata* distribution. The coal-loading road equalizes its car supply among divisions, and in doing so takes into account the foreign-line fuel cars. This is detrimental to the commercial operators, since it reduces the number of cars to which they would otherwise be entitled.

The record indicates that upon the whole the wastage during periods of shortage, which results from cars set not being loaded on that day but held over, is somewhat greater at mines which use the railroad or private assigned car than at commercial mines. A scanty or irregular supply of cars to the commercial mine makes for sporadic production, while the mine with the assigned cars flowing more steadily and closer to capacity is better able to utilize with promptness the equipment received. If the commercial mine has cars left over, unloaded, they are charged as against the subsequent supply, and the commercial operator goes to every length to avoid this in times of shortage, when the price obtainable for his product is usually the highest. The assigned-car mine is under less disability in this regard, and

is not subject to the same penalty, because its failure to load promptly does not decrease its future supply of assigned cars. While the difference in percentage between the two classes is not great, evidently in the aggregate some thousands of cars are involved daily in periods of shortage.

All interests represented take the position that the bituminous coal-mining industry is greatly overdeveloped, and that there is a surplus of labor available for such mines. In times of plentiful car supply, or when the demand for bituminous coal is low, many small or weak mines, which are the least economical to operate, are forced to close. Car shortages are usually accompanied by a condition of alarm on the part of the consuming public, and a demand for the coal which becomes more excited as the coal-car supply lessens. This encourages the opening of the smaller and weaker mines with the recurrence of a poor car supply, and the paradox is presented that as the car supply becomes worse, the capacity of the open mines increases at even a greater rate. This makes more difficult the process of distribution as the cars in service cannot be handled as efficiently, nor can as much coal be transported in the aggregate as if fewer mines were demanding service. The increase in demand and mine rating must be met by a *pro rata* distribution of the available cars, and thus the supply, already diminished because of the lesser efficiency possible in movement, is further diluted in the process of ratable distribution according to the enlarged capacity. The consequence is that in times of car shortage the commercial operators are in the keenest competition for cars. There is also a competition in the demand for cars as between users of coal. The service orders which we issued in 1920 and 1922 were based upon the insufficiency of the existing supply to meet all needs. Industries which were less vital to the public welfare, but better enabled to pass along their fuel costs, were able to bid up the price of coal for all users, and thus attracted an undue proportion from the more essential uses, to the detriment of the convenience of the public and the commerce of the people. A shortened car supply at commercial mines, from whatever cause, tends in this direction.

Respondents have interpreted our decisions as permitting the assignment of cars on a day-to-day basis. Thus, on a given day a mine with a rated capacity of 20 cars loads railroad fuel, and receives 20 assigned cars, while another mine with the same rated capacity loading commercial coal is supplied but a percentage of its rating. The next day both mines load commercial coal, and are given the same number of cars. The mine loading railroad fuel on the one day has thus received more cars in the aggregate than the mine of equal rated capacity which has shipped only commercial coal. A strict construction of our decisions shows that we did not prohibit the assignment of cars for railroad fuel in excess of the percentage of cars available for commercial loading when the output of a mine was taken for only brief or intermittent periods. No time limit was imposed by us. After we issued our notice to carriers and shippers, dated April 15, 1920, and railroad fuel cars were considered as assigned cars, the possibilities of the practice were carried to the extreme in some instances and such cars were given to a mine for its entire output for a day or for certain days, and the mine was treated as on a commercial basis for succeeding or intervening days. This was an intermingling of the two ideas of taking a part of the output of the mine and counting against it the cars assigned to it for railroad fuel, and the other provision for taking the entire output of the mine. We found it necessary to exercise our emergency powers under paragraph (15) of Section 1 to restrict the practice, and to make it clear that the brief or intermittent use of a mine for railway-fuel supply would not warrant the application of the assigned-car privilege. As previously stated, service order No. 18, since vacated, prohibited the assignment of cars and failure to count them against the distributive share of the mine for the day, or assigning cars in excess of the mine's distributive share for the day, except where the entire output of the mine was taken for a period of not less than six consecutive months. After the cancellation of that order certain carriers again resorted to the former practice of assigning cars for the entire output

of a mine or mines for a day or for certain days, and distributing cars to that mine on the other days for commercial loading, and now follow that practice. In the rules proposed the respondents do not recommend that the application of the assigned-car privilege should be limited by a requirement that the railroad shall make term contracts for the entire output of the mines at which the assigned cars are to be placed. It is conceded that all such requirements are not so covered, and it is claimed that they cannot be, and some leeway must exist within which the railroads may apply the assigned-car rule.

The opponents of the assigned car also object to the limitation of the use of the assigned car to output contracts for periods of six months or more, but on different grounds they contend that such limitation would not eliminate the evils produced by the practice, but would bring about additional evils. An operator owning only one mine would have to elect between a complete severance of all commercial connections and a complete renunciation of the assigned cars. His competitor who operates more than one mine and who is in position to continue in both kinds of business would be under no such disability. Under service order No. 18, we permitted the operator who owned a number of mines and had contracted with a carrier or carriers for the total output of one mine to asign cars at some one of the mines of the operators in the same district on different days. This, it is contended, subjects the single-mine competitor to all of the disadvantages of both the output-contract system and the partial-output system. The large operator with a number of mines, if required to confine assigned cars to the mine having an entire-output contract would probably experience labor trouble at his other mines shipping commercial coal.

Numerous operators specialize in domestic coal, and have prepared themselves for its production by the installation of proper machinery. This class of operators is essential to the supply of the domestic coal of the country. During the domestic-coal season they sell the prepared sizes

for domestic consumption and the screenings for other purposes. At the close of the domestic season they can not put their prepared sizes on the railroad-fuel market under the six months' contract rule, because they can not afford to enter into such a contract, and could not dispose of the screenings if they did so. The operators would thus be left with screenings which they had no way of shipping, unless given commercial cars or assigned cars for this purpose, either of which would violate the rule. The output-contract rule also involves difficulties because some roads purchase nothing but prepared sizes of screened coal, while others purchase run-of-mine coal and screen and crush it themselves, using the prepared sizes for locomotive fuel and for the heating of buildings and the screenings in their shops.

It is the practice of certain coal-loading carriers to charge cars delivered to them by another railroad for the loading of the latter's fuel, both as assigned cars and as cars delivered under interchange arrangements. This gives the delivering line the benefit of the assigned-car rule, and also credit for delivery of equipment to the coal-loading road of the same cars. As the coal loading carriers commonly ship a large amount of the bituminous coal they produce to points upon the lines of connecting carriers, the proper balance of interchanged cars is highly important in conserving the car supply of the originating line. The practice mentioned tends to diminish that supply, and thus decrease the available cars for commercial coal loading. We do not regard the practice as proper.

Much of the voluminous record has dealt with the practical effect of the operation of the assigned-car practice upon mine labor. The evidence is conflicting in many respects, and it does not seem necessary to state it other than generally. The mine operators are not unaminous in their opinions that the result of the assigned-car practice has been detrimental to their industry; but the great majority of the mine operators, and all the representatives of mine labor who appeared are firmly of that conviction.

Out of the mass of conflicting testimony it may be conservatively stated as established that the general effect of the assigned-car practice is to attract as many desirable miners as can be given employment to the assigned-car mine, and away from commercial mines, and particularly so in the unionized fields. The commercial mine has a more rapid labor turnover than the mine operating with assigned cars. Often these two classes of mines are located close to each other, and the miners paid upon a quantity basis in the commercial mines are rendered discontented when they are compelled to remain idle a large part of the time because of car shortage, while neighboring mines with the assigned cars are operating on substantially a full-time basis. This is one factor which has contributed to the unsettled labor conditions in the bituminous mining industry during recent years, and has been urged as a reason in support of the maintenance of existing wage scales or for still higher rates of mine pay. Without attempting to equalize the fortune, opportunities, or abilities of all the bituminous-mine operations or their mine laborers, it seems appropriate to consider this effect of the practice under consideration.

The result of the inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production. As it is the commercial supply of bituminous coal which is restricted by the free use of the assigned car, the increased costs are most sharply felt in coal intended for commercial consumption. It appears of record that during the late war, with the elimination of assigned cars the fuel administration simultaneously lowered the price fixed on all coal 10 cents a ton. The increase in cost because of inequality in running time is largely due to the fact that many of the expenses of the mines are constant; some are reduced but not eliminated by idle time, and the amount of the expenditures eliminated by idle time is proportionately small. The relation between the car supply and these costs

is immediate. The weight of the evidence is that mine production costs rise because of a diminished car supply, but at a sharper rate. Without attempting to reconcile the conflicting testimony as to the amount of such increased cost, we may safely conclude that it is considerable and important, both to the mine operator and to the consuming public. In weighing the benefits the railroads derive from the assigned car, this indirect cost to the coal-consuming public must be given proper value.

The protestants contended that in return for the preference in car supply given to mines loading railroad fuel the carrier is able to secure its fuel coal at a lower cost than would be the case if the cars were distributed on a *pro rata* basis. The record does not support the statement more often made to us outside this record than in it that the railroads deliberately and directly use the assigned-car privilege as a means of coercing unreasonably low prices for fuel.

Mine operators prefer to have the assurance that cars will be furnished for railroad fuel coal, and a promise of this character is one of the factors which influences the making of the contract. If the operators do not have this assurance, there would be a higher price. Without doubt in many cases the assurance of a full car supply tends to bring the railroad buyer and mine-operator seller together upon a lower price basis than would otherwise be agreed upon without that factor being mentioned in the negotiations at all; in some instances the assurance of a good car supply is named or advertised as an essential consideration. For the present we need give this consideration only as it bears upon the fact previously commented upon, that the commercial-mine operator is sometimes forced out of the commercial business and is compelled by his necessities to take advantage of the assigned-car privilege and to sell his product to a different class of users at a lesser price than he otherwise would. The respondent carriers repudiate the suggestion that they seek or should be permitted to use the assigned-car privilege as a means of securing fuel coal at an unreasonably low price.

In the case of mines which a railroad carrier owns, situated upon its own rails, or where mines are operated under a long-term lease virtually the equivalent of ownership so far as duration is concerned, a somewhat different situation exists with respect to competition with commercial mines than when such mines are privately owned and either leased to carriers or covered by output contracts and operated by their private owners for periods of time such that they may fairly be said to continue to be actual or potential competitors with commercial mines in the vicinity. The mine owned or controlled by a railroad carrier situated upon the lines of another railroad comes into competition with the commercial mine near by. The practical difficulties of determining whether a leasing arrangement is of such a character that it is removed from the competitive field are manifest. Should the privilege of assigned cars be restricted to mines of railroad ownership, the effect would be to encourage the railroads to buy mines and thus increase the present number of assigned cars, or else to induce them to open new mines of their own membership, which would not only have the same results, but would undesirably add to the capacity of the already over-developed industry of bituminous-coal mining.

There has been much adduced bearing upon the ability of the carriers to secure their reasonable fuel requirements without the use of assigned cars. The operators contend that such needs can be met adequately by one or more of the following methods, without assigned cars: (1) By storing more substantial amounts of fuel coal at points of consumption during periods of inactive demand upon the part of the public, which, it is claimed, can be done without undue expense; (2) by a wider distribution of fuel contracts among producing mines; (3) by contracting that a certain proportion of the coal produced and to be shipped shall be carded for railroad use before deferred customers are supplied; and (4) by order of this commission suspending the applicable rules as to equal distribution in special cases of real emergency, under the powers conferred by paragraph (15) of section 1 of the act. The

carriers doubt or deny the practicability of these suggestions. Perhaps singly none of these suggested courses would suffice, but in combination they would greatly mitigate the results which the respondents claim would follow the abolition of the assigned-car privilege. That some other course is practicable is strongly indicated by the fact that many of the great bituminous-consuming railroads have not found it necessary to assign cars to insure an adequate supply of suitable fuel. The argument from individual necessity should not be pressed too far in this regard in the absence of a showing as to a sufficient experience in operating under the practice of equal distribution.

But the railroads are not the only agencies as to which the public interest requires that there shall be a steady supply of suitable fuel at a reasonable price. There are many important activities which labor under the same necessity as the railroads, who have not enjoyed the privilege of assigned cars, save during a few months in 1920 and 1922 when specially designated in certain individual cases by our emergency service orders, or as they may have employed private cars. Yet they have all continued to function. As illustrative, by our service order No. 23, in 1922 we classed equally with railroads other common carriers, the bunkering of ships and vessels, public utilities which directly serve the public under a franchise therefor, street and interurban railways (some of which are competitors of the steam railroads which use assigned cars), electric power and light, gas, water, and sewer works; ice plants which directly serve the public generally with ice, or supply refrigeration for human foodstuffs; hospitals; the United States, State, county, and municipal governments, and their hospitals, schools, and other public institutions. The needs of the Army and Navy are important. If the railroads are to continue suplying their fuel needs by a continuance of the assigned-car practice as proposed, there is good reason we should consider extending the same privilege to some or all of the public utilities and quasi public utilities mentioned.

The circumstances surrounding and subsequent to our decisions in the Traer and Hocking Valley cases are such that the practice based upon the rule there announced can scarcely be given the sanctity of long observance in considering the question of reasonableness or undue-preference. We have already shown that the power of assignment during the Federal control was lodged in the car-service section of the railroad administration. The rule was not reestablished until April 15, 1920. On October 1, 1920, service order No. 18 further limited the rule in its application, and that order, bottomed upon the emergency powers conferred upon us by paragraph 15 (*a*) of section 1, remained in force until March 24, 1921, when we instituted the present investigation. From 1907 to the latter part of 1918, there was no general coal-car shortage throughout the country except during the latter part of 1912. The rule announced in the Traer and Hocking Valley cases was never given nation-wide application. As the rule is unimportant to the carriers in times of car surplus, it was only during the latter part of 1912, and during the latter part of 1916 and 1917, that the carriers in the eastern part of the United States relied in a material way upon the rule in the securing of their fuel. The latter car shortage disappeared in April, 1918, and upon the recurrence of a period of shortage, the railroad administration had ordered the abolition of the practice. Shortly after Federal control was terminated, as previously stated, we assumed control of the situation during the car shortage of 1920, due to the so-called outlaw strike, and exercised our emergency powers until the complete termination of the period of shortage. Similarly, in the recent car shortage due to combined effects of strikes of the bituminous-coal miners and railway shopmen, our special service orders and directions controlled the distribution of equipment for coal loading. Indeed, during the life of certain of our service orders in the shortage of 1922, we notified the carriers that the use of the assigned car was regarded as inconsistent with the letter and the spirit of the general

plan of distribution which we were seeking to effectuate. From the beginning of the car shortage of 1916, at least, the operation of the rule has been bitterly contested and opposed by the majority of the commercial-mine operators, and solidly by mine labor wherever organized.

The rule evolved in the early decisions was not the fruition of ripe experience. The Hocking Valley decision, as we have stated, was in 1907, and the Hillsdale case was decided in 1910. Commissioners Clements and Lane had joined in the reports and orders in both the Hocking Valley and Traer cases. In a dissenting expression in the Hillsdale case, Commissioner Lane, Commissioner Clements concurring with him, referred to the whole question of coal-car distribution as then being in a state of flux, and that on the investigation made by the commission three years before, it was brought out and clearly established that the distribution of cars to coal mines was based largely upon interest, prejudice, and pull. Hillsdale case, *supra*, page 387. Subsequent to the Hocking Valley and Traer decisions and other related cases an effort was made to establish rules which would not be open to objection on the ground of discrimination, but the rules were referred to by Commissioner Lane as tentative and experimental and not representing the crystallized experience of years.

III.

We may now consider use of private cars upon an assigned basis.

Much of what has been said as to the practical effects of the practice of assigning railway fuel cars, system and foreign, is equally descriptive of the results of the assignment of private cars. There are certain additional matters which require consideration. In passing, we may repeat that the assignment of private cars was not prohibited by the United States Railroad Administration.

In the Hocking Valley case we condemned the long-existing practice of failing to charge private coal cars

against the percentages in distribution of cars to coal-mining companies. In effect we held that private cars should be given to the mines to which they were consigned or assigned, but that they must be counted against the distributive share of the mines. If the number of such specially consigned or assigned cars equaled or exceeded the distributive share of a mine receiving them, it should have no additional cars, but if not equal to the distributive share, the mine should be given only sufficient additional cars to make up its distributive share. Our holding is thus seen to have been a marked limitation upon a practice in effect and was based upon the issue as to undue discrimination or preference.

Subsequently, in the Hillsdale case, *supra*, the majority of the commission said that the general theory for the distribution of coal-car equipment according to the general trend of the decisions as stated in Logan Coal Co. *vs.* P. R. R. Co., 154 Fed. 497, 503, "has appealed strongly to this commission as being fair, reasonable, and nondiscriminatory." 19 I. C. C., 364. The nature of the trend was stated thus by the court in the cited case:—

> "The general trend of the decisions is to the effect that all cars, whether individual cars or owned by the railroad company, or assigned by other railroad companies for fuel, shall be treated as an available car equipment as a whole, distributable *pro rata* to shippers desiring their use along the line, upon a basis giving each equal facilities with the other." (Citing cases.)

The majority insisted that the owner of private cars was entitled to their exclusive use, but held that all cars of this description must be counted against the distributive share of the mine receiving them. Notwithstanding the rule requiring *pro rata* distribution quoted by the majority as having appealed strongly to the commission as fair, reasonable, and nondiscriminatory, the report continued:—

> "Although the mine owning private cars * * * is entitled to receive them even though in excess of its ratable proportion of all available coal-car equipment, nevertheless the defendant will be required in the future to count all such cars against the distributive share of the mine so receiving them."

And the majority denied the request of the complainant that the defendant be required during percentage periods to distribute all coal cars ratably among the operators according to a rating theory which we were unable to adopt As will appear subsequently, Commissioner Prouty dissented because, in his opinion, the majority should have gone much further than it did in wiping out inequality in the treatment of the private assigned cars as compared with the distribution to the commercial mines.

In many cases we have had occasion to consider the nature of the obligations and rights of the owner of private cars and of the carrier which transports them upon its rails, with particular reference to the situation of other shippers who do not own such cars and are dependent upon the railroad for a supply of equipment. The development of the relation from the time when the railroads were simply toll lines and the shipper furnished his own car is stated in In the Matter of Private Cars, 50 I. C. C. 652, 656, and is well-known history. But the carriers are no longer regarded as toll lines, even as to the comparatively few privately owned cars of various descriptions which they transport. The Pennsylvania seemingly has some charter duties as to the transportation of privately owned cars, but such obligations can not defeat the power of Congress to compel equality of treatment of shippers in interstate commerce.

Commissioner Prouty in his dissenting expression in the Hillsdale case, said:—

> "The use of private cars is growing less, and the question will, in all probability, never be a living one. I do not, therefore, care to discuss it, but wish simply

to note my position. In the matter of car distribution every car should, in my opinion, be treated as though owned by the railroad upon whose line it is in service."

There have been many cases in which we have considered the relation of the private car to the railroad as it affected the rate paid by its owner as compared with the rate paid by others. The parallel between preferences and prejudices in respect of rates is manifestly close with preferences and prejudices in respect of service; indeed, with a low-grade commodity such as coal, it often happens that an inequality with respect to car distribution, controlling, as it does, the quantity of production possible, is much more important to the shipper than the amount of the transportation charge he pays. Certain principles are clearly stated in our reports, running throughout from almost the creation of the commission to the present day. The private-car owner has no right to demand that his cars be transported over the lines of a carrier which has not consented thereto. The obligation of furnishing an adequate supply of equipment by statute rests upon the carrier, and does not rest upon the shipper. The duty can not be transferred to nor required of the shipper. The use of private cars by railroad carriers has been recognized by Congress, which has provided for the control of the use of such equipment by us, under the provisions of the interstate commerce act, by means of a mandate addressed to the carriers subject to our jurisdiction. We do not deal with the private-car owner as such. Congress has provided that if a shipper furnishes an instrumentality used in the transportation of property owned by him, the charge and allowance therefor shall be no more than is just and reasonable, and has authorized us to fix the maximum reasonable charge to be paid by the carrier for the use of the instrumentality so furnished. (Paragraph (13) of section 15; compare paragraph (14) of section 1.)

But the rule of Congress goes further. The term "car service," as defined in paragraph (10) of section 1, clearly includes the supply and movement of private cars. By

paragraph (11) it is made the duty of the respondents to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful. By paragraph (14) we are given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to the act, including the compensation to be paid for the use of any car not owned by the carrier using it.

Throughout our reports we have held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout we have recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation.

The position taken by the courts and by this commission was well summarized in the report made by the committee on car distribution and car shortage to the National Association of Railway Commissioners in the promulgation of the Uniform Demurrage Rules, in 1909.* The committee was composed of a representative of each State that had a railroad commission, and Commissioner Lane of this commission:—

> "It is the carrier's duty to furnish all facilities of transportation, and it can not permit the presence of any equipment upon its line to work a discrimination as between shippers. * * *

* Proceedings of National Association of Railway Commissioners for 1909, page 214. The first paragraph quoted was taken from the report of the committee on car distribution and car shortage of the preceding year. *id.*, 1908, page 120.

"When a private car is employed by a carrier in lieu of its own equipment as an instrumentality of transportation it is thenceforth not a private car, but a railroad car; it does not regain its status as a private car until, after the transportation is concluded, it leaves the carrier's service. * * *

"The contract under which the car enters the carrier's service is a thing altogether apart from the carrier's undertaking to transport the owner's freight. In the one case the car owner by supplying the instrumentality of transportation assists the carrier to discharge its public function; in the other his status is that of an ordinary consignor or consignee.

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"A car owner can claim no advantage as a shipper that would not accrue to him if the car were owned by a different person having no interest in the freight."

The language quoted was cited by us in Procter & Gamble Co. *vs.* C., H. & D. Ry. Co., 19 I. C. C. 556, 559, where we held the private car liable to demurrage charges, even when on the tracks of the owner. The decision was sustained in Procter & Gamble *vs.* United States, 225 U. S. 282. In the margin we refer to some additional decisions in which the principles stated have been given application, generally in matters relating to equality of rates.*

After the Hocking Valley case and subsequent decisions to the same effect, the ownership of private coal cars gradually declined until about 1916. But the prophecy of Commissioner Prouty was not borne out by subsequent events or by present tendencies. Under the impetus of

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* Schofield *vs.* L. S. & M. S. Ry. Co., 2 I. C. C. 90; Worcester Excursion Car Co. *vs.* P. R. R. Co., 3 I. C. C. 577; Rice *vs.* W. N. Y. & P. R. R. Co., 4 I. C. C. 131; Shamberg *vs.* D., L. & W. R. R. Co., 4 I. C. C. 630; Independent Refiners Asso. *vs.* W. N. Y. & P. R. R. Co., 5 I. C. C. 415; Truck Farmers Asso. *vs.* N. E. R. R. Co., 6 I. C. C. 295; Carr *vs.* N. P. Ry. Co., 9 I. C. C. 1; Ruttle *vs.* P. M. R. R. Co., 13 I. C. C. 179; Pennsylvania Parafine Works *vs.* P. R. R. Co., 34 I. C. C. 179; and Armour & Co. *vs.* E. P. & S. W. Co., 52 I. C. C. 240

the war demand for coal and prolonged coal-car shortages, the ownership of private coal cars increased. There can be no doubt the incentive was the more regular and larger car supply provided under the operation of the assigned-car practice. The following statement shows the number of privately owned coal and coke cars as of January 1, 1913, and for each year from 1916 to 1922:—

Year	1913	1916	1917	1918	1919	1920	1921	1922
Cars	24,140	14,789	14,879	16,933	20,481	18,955	28,411	27,827

The record indicates that the increase in the ownership of the private cars within recent years has largely been on the part of the public utilities, the steel plants, and the by-product gas producers, many of whom sell their gas directly or indirectly for public consumption. With each of these classes of owners, steadiness of production is highly important; they are large users of specialty forms of coal, frequently of a high grade, and often compete keenly among themselves for the coal of certain preferred varieties found in particular fields. It is significant that the fuel cost is either passed on directly to the customers of this class of users, or is capable of absorption in the manufacture cost. The consequences of the assignment of private cars are more strongly felt in certain localities than in others. On some railroads the question is relatively unimportant. Upon certain divisions of the Pennsylvania, the Louisville & Nashville, and the Chesapeake & Ohio the private cars are a considerable proportion of the whole. It is abundantly made clear from the record that as competition becomes more keen more and more the public utilities, steel producers, manufacturers of by-product gas, automobile manufacturers, certain chemical manufacturers, glass works, and other industries likewise absolutely dependent upon a steady supply of coal, rather than face ruin each recurring coal-car shortage, will be compelled to acquire private cars which they may have assigned. The result is not only an increasing gross inequality between users of this form of equipment who are able to afford the very considerable expense in procuring and maintain-

ing such equipment, reflected immediately in the disproportion between the amount of their output or consumption as the case may be, but also that the available facilities of the railroad carrier other than cars—locomotives, tracks, and terminals—are taken up in great degree by such classes of preferred uses, so that the commercial mines are and will find themselves unable to procure transportation for even the ratable share of the cars which the carrier owns and sets for them. If the practice is continued, it is not too much to expect that in future periods of car shortage due to insufficient motive power, strikes of maintenance-of-equipment employees, and like causes, the scramble for coal on the part of users who can afford to pay the price will lead to the effort to assign privately owned locomotives and train crews privately employed in the manner in which privately owned cars are now assigned. During the car shortage of 1922 we received requests to this effect.

The following statement shows the number of days worked during the year 1920 by certain mining companies owning private coal cars and the average number of days worked by all bituminous coal mines within the State of Pennsylvania, including the assigned-car mines:

Operator.	County.	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
Berwind-White C.M.Co.	Cambria	24	20	25	21	24	24	26	26	25	25	24	25	289
Do	Clearfield	22	13	18	19	19	17	15	16	7	17	17	17	197
Do	Somerset	24	20	26	22	24	25	25	26	25	25	25	25	292
Maryland Coal Co. of Pennsylvania	Cambria	25	24	27	24	26	25	26	23	25	26	26	26	303
Penn-Mary Coal Co.	Indiana	24	17	23	23	18	20	21	23	26	26	24	26	271
Union Coal & Coke Co.	Washington	26	24	26	24	24	23	25	25	24	26	24	23	294
Westmoreland Coal Co.	Westmoreland	17	16	18	16	17	19	19	23	22	23	24	25	239
Average all bituminous companies in State		19	17	20	17	17	19	19	20	20	20	19	19	226

Another complaint of the protestants is that privately owned cars enjoy the use of a disproportionately large part of the facilities of the carriers. During 1920 the operations of the United States Coal & Coke Company on the

Cumberland division of the Louisville & Nashville Railroad had a rating equal to one-sixteenth of the entire rated capacity of mines on that division, and their private cars used for their coal loading received one-eighth of the use of the transportation facilities. Users of private cars received 100 per cent. of their requirements regardless of the shortage of motive power, while unassigned mines received a much lower percentage because of the inequitable distribution of such power. The private-car owners assert that such preferential service can only exist when there is a general shortage of railroad facilities other than coal cars, such as the conditions brought about by the railroad shopmen's strike which became effective July 1, 1922.

The practices of the carriers differ. The Pensylvania apparently permits the owner of the private cars to place its cars for the owners loading at any mine the owner designates, even though such loading be for one day only. On the Chesapeake & Ohio, on the other hand, the placement of cars for the owners loading at mines other than those owned by him is permitted if regularly continued for a considerable period. But where the assignment is merely occasional the placement of cars is made on the same basis as system cars. Any overplacement of private cars at a mine on one day is subsequently adjusted to effect an equal distribution as between all mines. The Norfolk & Western does not handle private coal cars on its line. The Illinois Central favors the private coal car because it reduces the necessity of railroads furnishing themselves with equipment to take care of the gross volume of business that ordinarily they will be required to take care of in their own cars. The United States Steel Corporation owns a large number of private coal cars which are loaded at mines on the Illinois Central. The cars are delivered to the Illinois Central by the Elgin, Joliet & Eastern in train lots, and after the cars are loaded they are returned by the Ilinois Central in the same manner.

The record indicates that during 1920 and the summer of 1922 certain carriers, particularly the Pennsylvania, Chesapeake & Ohio, and the Louisville & Nashville, accorded to

private-car owners a greater use of their facilities than they should properly receive. The extent to which this was done, however, is not clearly established of record. The conditions of the past year were abnormal. The carriers' locomotives, due to the shopmen's strike, were in poor condition. The strike in the bituminous coal fields made a heavy demand for coal from the nonunion fields, a large part of which are located upon the lines of the three carriers mentioned, and taxed the carriers' facilities. The termination of the coal strike increased the demand for coal, with a resulting greater burden upon the carriers' already overtaxed facilities. In the congestion when the carriers were unable to transport promptly all traffic offered them, certain of them did prefer the handling of private cars from motives of convenience. These cars were usually moved in train lots in shuttle service, and avoided the additional switching and spotting service necessary in furnishing a like amount of transportation to the numerous mines shipping commercial coal in system cars. The abnormal conditions of the sumer of 1922 illustrate the natural effect of the assigned private car practice under conditions which should call for the utmost consideration of all shippers in order that the transportation disabilities of the carrier should be borne as equally as possible. Coal in private cars under the present arrangements is susceptible of easier movement than similar shipments in railroad cars because it usually moves regularly between the same points in large or trainload lots. This merely indicates the greater likelihood that such cars will receive preferred treatment.

There are other practices of some of the carriers in the handling of private cars which are not free from criticism. We have in mind particularly the placement for the private-car owner of its own cars at certain mines to be loaded with coal for the owner's use from day to day and the placement of system cars at the same mines on alternate days; if on the days on which such private cars are placed they exceed the *pro rata* share of cars to which that particular mine would be entitled if dependent wholly upon system cars, no sub-

sequent adjustment of such average is made. Any attempt on our part to mitigate the bad effects of such a practice is but temporizing. The private-car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or he is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable.

The owners of private cars contend that such cars are essential to insure a regular and adequate supply of coal; that the cars were purchased only after all other remedies had been exhausted and that it was the only method whereby their coal requirements might be met, except by the assignment of cars on order of the Government. It is claimed that the use of private cars during car-shortage periods releases railroad cars for strictly commercial mines, which otherwise would have to be placed at private-car mines. This overlooks the fact that particularly in times of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment, effectuated by giving his neighbor and competitor a better car supply. Except during car-shortage periods the investment which these owners have made, estimated at approximately $30,000,000 is of no practical utility to them. The mileage allowance paid by the carriers for the use of private cars, which is sufficient when the cars are employed in transportation service, is not adequate compensation for ownership when there is a car surplus. But the investment was voluntarily made, by persons not common carriers.

Congress has given the coal consumer a right to demand that adequate transportation facilities be provided by the railroad carriers, and has afforded a remedy for the enforcement of that right. We are now prosecuting an inquiry upon our own motion, No. 14489, under the provisions of section 1 of the act, as to the adequacy of the facilities for the performance as common carriers of car service by each of the railroads subject to our jurisdiction, with a view to

making an order requiring the respondents to provide themselves with such safe and adequate locomotives and cars as may be warranted by the facts as shown, and as required by law. This power upon our part, and remedy afforded to the shipper, first came into the interstate commerce act as one of the amendments made by the transportation act, 1920. The change in the law differentiates the present case from all those in which the assigned-car rule was developed as prior to February 28, 1920, we had no power to require a carrier to provide itself with reasonable facilities such as equipment, no question of discrimination being involved. United States *vs.* Pennsylvania R. R. Co., 242 U. S., 208.

Upon the facts shown of record we find and conclude that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the *pro rata* allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a *pro rata* basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same *pro rata* share of the total number of available cars, whether

assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

There appears to be no reason for the continuance of the investigation as to carriers serving solely anthracite coal mines, and the present investigation, so far as it in terms covers the distribution of cars at anthracite mines, will be discontinued.

We will enter an appropriate order, effective September 1, 1923.

EASTMAN, *Commissioner*, concurring:—

I concur in the majority report, except as to the conclusion "that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act." Paragraph (12) contains this provision:—

> "During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count *each and every car* furnished to or used by any such mine for transportation of coal *against* the mine. [Italics mine.]"

I am unable to escape the conclusion that it was the intent and is the meaning of this provision that in times of

car shortage every mine should be limited to a *pro rata* share of the available car supply, and that in computing this share every car furnished to the mine, whether private car or railroad-fuel car or car for commercial loading, should be counted. Under the assigned-car practice now in effect, however, it appears that the number of such cars placed at a mine may, and often does, exceed its *pro rata* share of the available car supply. It does not seem to me that in such cases the cars are being counted "against" the mine. The purpose of paragraph (12), as stated by the House committee when it was reported, was to avoid "any possibility of the recurrence of the evil of what is known as 'assigned cars.'"

I am aware that this view is not in accord with the opinion expressed in Assignment of Freight Cars, 57 I. C. C., 760, a report in which I joined. It is a view, however, reached after more consideration than I was able to give to the question at the time of that *ex parte* report.

I am authorized to say that Commissioner Campbell concurs in this expression of opinion.

HALL, *Commissioner*, dissenting in part:—

I concur in the conclusion of the majority that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act, but must dissent from the findings of unreasonableness and undue prejudice.

The car-distribution rules condemned by the majority are those prescribed by us more than 15 years ago. Our orders prescribing them were upheld by the Supreme Court of the United States. We then recognized that a carrier by railroad has the right to secure its fuel supply either from mines which it owns or from mines the entire output of which it purchases; and that if its contracts for fuel cover such supply as it reasonably needs for current operation it can use its equipment to procure its fuel even though operators of commercial mines are thereby deprived during periods of car shortage of some cars which they would

receive on a strict prorating of the available supply. In other words, we found that this use by a rail carrier of its cars did not constitute an unjust discrimination or undue prejudice prohibited by the act. It is well settled that mere difference of treatment does not constitute unjust discrimination or undue prejudice. The right which we found to inhere in a rail carrier has not been abridged or denied by subsequent legislation. It rests upon the fact, elementary, fundamental, and partaking of the highest public necessity, that a railroad must have an adequate supply of fuel in order to supply the people with adequate transportation. This of course means that a railroad must have a reliable, steady flow of coal, of even quality best suited to its different needs, at reasonable cost.

The majority take away this right and brush aside the public necessity. They substitute nothing which will protect either the public servant or the public served. In focusing their attention upon the commercial-mine operator they seem to lose sight of the entire traveling and shipping public, as well as the myriad industries dependent upon transportation, all entitled to as much consideration as the producer of coal when the issue of unreasonableness or undue prejudice is raised. In effect, although not in intent, their findings subordinate the needs and interest of all others to those of the coal industry. But even in that restricted field it little profits to compute the fractions of a car which uniform prorating would add to the daily supply of a commercial mine if the carrier lacks power to place the empties or haul away the loads. Again, it is said that the commercial coal goes in part to public utilities of various kinds whose needs are as great, and impressed with a public interest as great, as those of the railroads. That is true, but the difference is that the railroads reach the mines and the other utilities do not. Before they can use the coal the railroads must bring it to them. Therefore in their interest, and that of the public they serve, the supply of fuel for the railroad service comes first in importance as well as in time of use.

Until now the commission has recognized that fuel was as indispensable to the rail carrier as the rail or ties or roadbed or cars or locomotives, not at some times merely, but at all times, if the public is to be adequately served. The duty of the common carrier is to carry for all who offer, "unless his coach be full."

Use of the assigned car and the private car is not ideal, but it is at least practical, has been tested in times of stress, and no workable substitute therefor has been developed or is now prescribed. The alternatives left are confiscation by the carrier or priority orders by us. Is not this a recognition in another form of the public necessity that the carriers must have fuel in preference to other consumers? The majority would reserve to the commission the right to direct a discrimination in the distribution of cars which it condemns as unlawful when practiced by the carriers. Can it be said that the preferential assignment of cars under orders of the commission will not tend to bring about the very conditions in the coal-mining industry for which the assigned-car practice is here condemned? The harm, if harm there be, to the industry will be just as serious if brought about by a series of service orders as if brought about by application of the general rules prescribed and sanctioned by us and now in effect.

Respondents propose to include in their definition of assigned cars the words "and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission." This is not condemned by the majority. But the treatment of private cars, and cars assigned for railroad-fuel loading in accordance with our cited decisions, is condemned as both unreasonable and unduly preferential. If unreasonable, how can we by priority orders make the same treatment reasonable? Our power under section 1 (14) is to establish reasonable rules and practices with respect to car service, and under section 1 (15), in time of emergency, to make such just and reasonable directions with respect to car service as in our opinion will best promote the service in the interest of the public and the commerce of the people.

We are not given *carte blanche*, at discretion, to do anything or everything which may occur to us. The Congress has provided the yardstick. What we direct must be just and reasonable, and in the public interest. It follows that we can not, even in time of emergency, direct what we have deliberately found and declared to be unjust and unreasonable. If and while the finding of the majority stands unreversed it is difficult to see how the commission can relieve lack of railroad fuel by priority orders.

This brings me to what I regard as the fundamental misconception of the majority. They condemn the maintenance of rules which tend to cut down or eliminate altogether so-called car shortage, and occupy themselves with expedients for ameliorating the effects of car shortage, when it comes. Car shortage is frequently not so much a lack of cars as of power. That was true in 1922. Car congestion, also, is largely due to lack of power. For power an adequate supply of proper fuel is indispensable. The rules proposed by the carriers tend to prevent recurrence of emergency. Priority orders deal only with the emergency after it has come. It will be conceded that the railroads as producers of coal for their own use, as purchasers of coal for their own fuel use, and as consumers of that coal, are not subject to sections 1 or 3 of the interstate commerce act, or to regulation by us based on those sections. However profoundly their consumption of 28 per cent. of the country's annual product of bituminous coal may affect mining fields, or individual operators, or mine labor, it is not for us to say that what they may do as such producers or purchasers is unjust, or unreasonable, or unlawfully discriminatory. It is only when they use instrumentalities of interstate commerce in moving that coal, if their own, or engage in common carriage of it for each other, that they become subject to these provisions of the act, because in their capacity of common carriers they must use their instrumentalities for the equal benefit of all who seek common carriage without undue preference or prejudice to any. As common carriers, then, and only as

common carriers, are they before us in this proceeding, even though any one of them, in moving its own coal for its own use from origin to destination on its own line, is not engaged in common carriage. And this is so because it is using instrumentalities of common carriage in the movement.

We must therefore dismiss from our thought all consideration of the effect upon the mining industry of carriers' operations as producers or purchasers of fuel, and confine ourselves to what the carriers do in and about moving that fuel, bearing in mind that we have no power under the act to take away from any carrier its rights. It has the right and it is its duty to secure an adequate supply of fuel. That can not be denied or taken from it. The public has the right to a transportation machine fully protected and able to function at all times. That right is not fully protected by service orders from us after an emergency has arisen. The task of hauling and distributing railway fuel drawn from many mines is complex and of exceeding difficulty. Because of the varying qualities and characteristics of different coals the efficiency of fuel is easily impaired, with a resulting direct loss in efficiency of the equipment. Obviously the modern locomotive can not burn to advantage every kind of coal that is fed into it. The fuel used in a stoker-fired locomotive is not the same as that used in a hand-fired locomotive. Many instances of the different uses to which railway fuel is put could be mentioned. But certainly the public must have regular, continuous, and ample service. If the fuel supply fails, the service fails; if the fuel supply deterioates, the service deterioates. Whatever the cause, the effect is immediate. Much harm could be done before we could find that an emergency existed which called for the exercise of our extraordinary powers and before whatever orders we issue could become effective, even if such orders were reasonable and would remedy the situation.

The public interest requires that carriers should manage their properties in an economical and efficient manner.

It certainly can not be contended that to abolish the present practice of the Baltimore & Ohio, for instance, as set forth in the majority report, will be conducive to economical and efficient operation.

Under our statutory power we recently authorized a loan from the United States Treasury to an important carrier, which has practically no coal mines on its line, to enable it to secure 1,000 coal cars. These cars were desired and needed to handle fuel coal for the carrier because of the unreliability of car supply on the originating lines. If the majority report is right, the carrier was unwise and we were improvident. This carrier had placed orders for fuel last year with the mines which depended upon the originating lines for cars. The carrier was forced because of defaults under its contracts to go into the open market and purchase 300,000 tons of spot coal at prices which averaged $1 per ton in excess of the contract price.

Beyond all shadow of doubt what we are here doing will substantially increase the fuel cost of the carriers. The public must pay that cost. In busy times the forgetting of contracts has not been unknown in the coal industry. Carriers are then forced into the spot market and compelled to pay very high and in some instances extortionate prices, or else resort to that evil of evils, confiscation, which brings in its train an ultimate adjustment at the top price. These are not mere speculations of what may happen. We know from experience that they have happened and must happen again when carriers are denied recourse to the only effectual preventative.

The assigned car enables the railroad to select its coal to meet its various needs, permits the concentration of purchases and policing as to qulity as well as the assembling and handling at minimum expense, and guarantees delivery. It also results in regular mine operation, steady employment of miners, reliable supply, and thereby in lower costs. The ultimate effect is efficiency and economy. This is obviously in the public interest. Whether the as-

signed car is for the greatest good of the greatest number is apparently of no concern to the operators who assail it.

Much of the opposition to the assigned car is based upon its effect on mine labor. It is not for me to point out the shortcomings of the coal industry, overdeveloped as it is, with thousands of mines so situated that they can only be operated at a profit when there is a runaway market. An adequate all-the-year-around supply of transportation would leave many of those mines permanently closed, and naturally their operators become the stormy petrels of the industry. The record shows that in six years the number of mines, not including wagon mines, grew from 3,669 in 1916 to 8,722 in 1921. The term "car shortage," as used by coal operators, is usually applied with reference to the capacity of the mines. That capacity far exceeds the annual consumption or demand. Whatever may be the troubles of the coal industry they can not and will not be remedied to any appreciable extent, if at all, by the action of the majority.

In Assignment of Freight Cars, 57 I. C. C., 760, 766, we said what is as true to-day as it was then:—

> "No other definite rule or practical plan has been suggested by the interested parties in the many conferences that have been had on this subject. No rule other than laid down by the Commission and sustained by the Supreme Court had been presented or tried after the decision of the Supreme Court, hereinbefore cited, until, as stated, the rule was changed under war conditions when the railroads were under federal control and the production, distribution and marketing of coal was under a war time federal administration.
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> "Both before and since that action was taken parties interested in or affected thereby have been freely invited to suggest some workable concrete plan under which the railroads can get a dependable supply of

> the quality of fuel adapted to their uses which can fairly be substituted for the rule to which some objections have been made. No one has suggested such a substitute rule."

Thus far I have dealt chiefly with railroad cars assigned for railroad fuel. Private cars are included in our former decisions as in the rules which respondents now propose. Some of the operators own and use private cars and perhaps for that reason the attack upon the private car is not as concerted or vehement as upon the assigned railroad car. My brother Daniels truly observes that the private car is not an outlaw. At this stage of our rail development and equipment it serves a useful purpose.

Everything in this record tends to show that the private ownership and control of coal cars results in greater economy and more efficient use, and, of course, the whole public is to that extent benefited. Here as elsewhere throughout this proceeding we should heed the paramount interest of all classes of shippers, the railroads, and the entire public, and not let those interests be obscured by the demands of one class of producers. Acting under what has heretofore been a right, recognized by statute and by us, shippers, particularly those who are given preference in our service orders, have tended more and more to equip themselves with their own coal cars. This should be encouraged, for, if many shippers would provide their own cars, the carrier equipment available for others, particularly the smaller shipper, would be greatly increased, car shortages would be reduced, the necessity for service orders would be lessened, and thus the public interest would be served to a substantial extent.

In our report in In the Matter of Private Cars, 50 I. C. C. 652, at pages 672 and 673, we said:—

> "For more than 30 years privately owned cars have been extensively used to transport commodities in interstate commerce. They came into use originally because

the railroads would not, or did not, supply them in sufficient quantities to meet the demand. * * * If private ownership or control of cars of particular types results in greater economy and more efficient use, the whole public is to that extent benefited.

* * * * * * * *

"In the beginning carriers could no doubt have insisted upon their right to furnish all equipment. They did not do so, and in the course of years there has grown up a system of private ownership of such magnitude and importance that it must be reckoned with as an existing condition. * * *

"The system of the use and supply of private cars that now exists cannot be at once and radically changed, without serious consequences to shippers, carriers, and the public."

The power to tax is the power to destroy. Not so with the power to regulate. It should be used to throw about the use of assigned cars, including private cars, such proper precautions and restraints as will promote the public interest, but not to do away with the use itself for all practical purposes. We are dealing with the rights and duties, as well as the imperative needs, of the great transportation systems upon whose adequate functioning the welfare of the whole country depends. The majority by its finding of unreasonableness in what the carriers do to forestall impairment of car service throws open to challenge the reasonableness of such priority orders as the Commission may put forth in future attempts to ameliorate that impairment when it comes; and by its finding of unlawful discrimination condemns the exercise of a carrier's right, instead of surrounding it with appropriate safeguards against abuse. Subject to such safeguards, which can readily be prescribed from the record now before us, the rules proposed by respondents are to my mind founded on reason, fortified by experience, abundantly justified by public need, and free from unlawful taint.

For the reasons which I have endeavored to indicate, as well as for others well expressed by my dissenting brethren, I am unable to concur in these findings of the majority.

DANIELS, *Commissioner*, dissenting:

I concur in the report so far as it construes paragraph (12) of Section 1 of the Act.

I am unable to concur in the finding that the present practice of assigning private cars and system or foreign-line cars for railway fuel to bituminous-coal mines is unjust or unreasonable or unduly or unreasonably prejudicial.

My reasons for withholding my concurrence in the report's finding may be summarized as follows: First, the right of a common carrier to obtain fuel for carrier purposes is based on such paramount necessity that the assignment of cars to mines whose entire output is taken by the carrier, even though such assignment of cars disregards a *pro rata* allotment of open-top equipment among all mines, is not unduly preferential of the carriers or prejudicial to the shippers of commercial coal. Unless the carriers obtain sufficient fuel of the character best suited for effectively moving their locomotives, it is apparent that efficient and economical operation is rendered difficult or impossible. The resort by carriers generally to the use of the assigned car would indicate that their experience demonstrates that this system is the most effective, efficient, and economical to attain the end sought. Nor am I persuaded that the abolition of the practice under the present rule will have any other effect comparable with the increased price of fuel to the carriers and a consequent increase in the cost of transportation. I am not persuaded that the abolition of the present practice will appreciably reduce the net cost of mining or moving commercial coal. New England carriers testify that the abolition of the practice will require a doubling of the amount of coal currently stored. Such augmentation of storage will absorb for railway-fuel use an additional number of open-top cars. It will saddle New England carriers with an additional cost per ton for the additional amount of coal they will have to store. It will augment the per

diem and car rental. The same or similar effects may be anticipated in all regions of the country. Every additional car absorbed for the supply of railway fuel will lessen to the same degree the number of open-top cars available for general commercial use. It is argued that the abolition of the rule will permit an increase in the working time of commercial mines. The possible increase is, in the first place, not great quantitatively. It may amount to three days per month. There will be a corresponding diminution in the working time of the mines supplied now with assigned cars. The diminished overhead expenses per ton in the first instance will be offset by the increased overhead expenses in the second. Moreover, it must be borne in mind that, except in periods of shortage of open-top equipment, there will still continue a difference in the working days per month between mines which secure large contracts covering their entire output and other mines which are not equally successful in making similar contracts for the disposition of their coal. When it is remembered that, taking a period of 10 or 20 years, the number of months in which there is a shortage of open-top equipment is a very small percentage of the total time, it would appear that the collateral effect of equalizing working time between commercial mines and assigned-car mines in the period of shortage of open-top cars will be in the long run almost negligible. The report properly indicates that the basic difficulty in the coal situation is the overdevelopment of bituminous mines and the vast potential oversupply of current requirements. This fundamental difficulty will persist despite the abolition of the assigned-car rule.

In short, so far as railway fuel is concerned, the assigned-car rule has proved on the whole a workable means of affording an adequate fuel supply of the proper quality and at a low price per ton. The revocation of the rule, in my judgment, will jeopardize the regular supply of dependable railway fuel; it will make for increased locomotive failures by reason of the inability of the carriers to obtain the grade of fuel which is most efficiently employed; it will augment the price of railway fuel without appreciably affecting ad-

vantageously the price of commercial coal; and it will render inevitable, in times of emergency, a resort to emergency orders carrying priorities which, in essence, are an admission of the necessity and utility of the present practice.

So far as the supplying of connecting carriers with coal is concerned, many of the considerations outlined above will apply. These connecting carriers on whose lines coal in sufficient amount is not mined now own open-top equipment which they may in part allot to other uses upon their own rails and thereby make an additional draft upon the open-top equipment of the carriers upon whose lines coal mines are located. Such a withdrawal will tend only to lessen the pool of open-top equipment now available for the movement of coal traffic generally.

So far as the so-called private cars are concerned, the situation is slightly different, although I am not persuaded that the abolition of the present practice will result in any advantage to the public generally or to the ordinary shippers of commercial coal. With the violent fluctuations in the coal demand as between periods of intense industrial activity and periods of industrial depression, it is perhaps questionable whether the railroad carriers can be reasonably expected to have ready at all times open-top equipment of their own ownership capable of carrying the peak load. Many private cars have been provided by their owners for just these periods of peak demand. They have thought it wise policy to make the investment to an aggregate amount of something like $30,000,000 rather than to risk their coal supply upon available equipment of carrier ownership or to confront the necesity of having to pay spot prices for coal in a runaway market. The abolition of the present practice limits the availability of these private cars for transportation purposes. For example, a public utility may turn over to a carrier 100 cars for placement at mines where the utility owner has contracted for the entire output. At present all of these cars would be placed at the mine, and, if the output suffices, they would all be immediately loaded and moved. My understanding is that, under the change in

the rule, while these private cars would have to be placed eventually at the designated mine, only the mine's ratable proportion could be moved at a time when there was a general shortage of open-top equipment. If the shortage amounted to 50 per cent. then half of these privately owned cars are required for the time being to stand idle on track and may not be moved except in accordance with the rule that assigns all open-top equipment to all mines in proportion to their respective ratings. How such a withholding of these cars from the work of transportation, even though for a temporary period, can benefit the public generally I am unable to see.

It should also be remembered that the private car under the law as it now stands is not an outlaw. The act contemplates the furnishing of service and of facilities by the owner or the shipper of freight. Section 15, paragraph (13), provides that:—

> "If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, * * * determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished * * *."

Clearly, private cars are an instrumentality.

In our report In the Matter of Private Cars, 50 I. C. C. 652, 672, we say:—

> "An amendment to section 1 of the act, approved May 29, 1917, provides as follows:
>
> " 'The Commission shall, after hearing, on a complaint or on its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car

not owned by any such common carrier, and the penalties or other sanctions for nonobservance of such rules.'

"The Congress has thus recognized the use of privately owner cars in transporting the commerce of the country, and has provided for their control by the Commission through rules and regulations of carriers hauling them."

The warrant for the carriers' use of such an instrumentality is found in the act. For us to make a finding which shall in effect restrict, or cripple, or prevent the use of such an instrumentality appears to me to defeat the plain expectation of the Congress expressed in the section above quoted. It may even be suggested that such action on our part offends against the constitutional protection thrown about private property. It is urged that private coal cars now obsorb a disproportionate share of carriers' power and rails. But the legalized use of instrumentalities furnished by shippers implies the right to use a commensurate share of carrier power and tracks. Some of these private owners of open-top equipment utilize such equipment as a daily necessity in carrying on ordinary industrial operations where a steady supply of coal is absolutely indispensable. Other owners of private cars are public utilities supplying gas, electricity, and local transportation. Where concerns of either character, in reliance upon the lawful use of private equipment, have made substantial investments therein, I question the wisdom as well as the legality of impairing the serviceableness of such equipment by substituting the practice carried by the majority report. In the long run, it will amount to the unsatisfactory substitution of hastily issued emergency and priority orders whose effectiveness will be less than that secured through adherence to the present workable arrangement.

In outlining the above objections to the majority report, I am free to say that many of the abuses connected with or attendant upon the assigned-car rule might be properly controlled and virtually eliminated. I think,

however, that the remedy proposed is likely to prove far worse than the difficulties experienced under the present practice.

POTTER, *Commissioner,* dissenting:—

While the expressions of Commissioners Hall, Daniels, and Cox seem to me sufficient to condemn the conclusions of the majority report which are adverse to the use of assigned and private cars, the subject is of such importance that some elaboration may be justified.

Under the guidance of prevailing decisions, which I think we should follow, I accept the conclusion that paragraph (12) of section 1 of the interstate commerce act does not prohibit the use of assigned or private cars, even though *pro rata* distribution of all equipment is not observed and that we are authorized to sanction their use under proper restrictions. The question is whether under any circumstances and how they should be used where *pro rata* distribution is not observed. It is, perhaps, unfortunate that private cars for handling commercial coal and company and foreign railway-fuel cars are condemned together, for they are very different.

To my mind assigned and private cars perform essential functions which can not be accomplished without them. They are instrumentalities which can be used in correcting what is perhaps the most unsound condition in the industrial and commercial life. To forbid their use, if we have the power, will not be in the public interest.

In my opinion, if the majority report properly construes paragraph (12) of section 1, we have no authority to prohibit the advantages of assigned and private cars by requiring their *pro rata* distribution, although we may reasonably regulate their use. There is ample precedent for the use of the assigned and private car. In the early history of railroads all cars were owned by shippers. The charters of some railroads now obligate them to haul private cars. If a carrier desires so to do, there is nothing in the law which prohibits it, or gives us power to prevent

it, from making proper arrangements, though tariffs if need be, with a view to hauling private cars for an appropriate charge, so long as the same privilege is permitted to all and engaged in without unjust discrimination. Carriers have much latitude to determine how they will handle traffic, provided equal privilege is extended to all and all are subjected to the same rule. If a carrier elects to haul private cars, we can require that they be hauled for all who offer them. We can within reasonable limits restrict their use so as to require, for instance, that coal cars serve a particular mine for a period of reasonable length in order to avoid market disturbance. We are without power, in my judgment, to say, as the majority report does in effect, that a private car can not be used at all except as a part of carrier equipment.

There is public right and need to have railway fuel of high and even quality secured at the lowest cost. Assigned and private cars make for efficient and economical transportation. They promote regular mine operation, steady employment, reliable supply of coal of excellent quality to consumers, and low prices. If, under these circumstances, their use involves discrimination against some individual coal producers, such discrimination is in the public interest, is just, and should be supported. There is discrimination when cars are assigned to particular mines, but under existing conditions that discrimination is just and not unjust. There is discrimination always when, by common consent, anthracite coal is given a 100 per cent. car supply. Where discrimination is just, it should be allowed. Only unjust discrimination is prohibited.

Carriers are not receiving the returns that the law contemplates, that fairness requires, and that the public interest demands as an encouragement to expansion and increase of carrier capacity. At the same time the country needs lower rates. Increased efficiency and reduced operating costs must be looked to for general rate reductions. Next to labor, coal costs are the highest item of operating expense. No agency should leave undone anything within the legitimate exercise of its powers to bring about a re-

duction of coal prices. From every quarter there is demand upon the carriers for inceased efficiency and reduced operating costs. At such a time we, the guardians of public and carrier interests, are compelling the carriers against their will to adopt practices which will impair efficiency and increase costs. It must be recognized that the railways are making supreme effort, with much success, to meet the demands upon them. They are now more efficient than at any prior time in their history. With fewer men they have in recent months exceeded all prior achievements. They have been handling tonnage in record volume so efficiently that there has been scarcely a murmur of complaint and so smoothly that their marvelous performance is scarcely noticed. Already superior in public service to every other system of transportation in the world, they are headed for better work in which there is promise that railway problems will disappear. We now come forward with condemnation of their economy, with directions that require disregard of the public interest and a policy of extravagance and waste.

The law authorizes regulation of transportation but not of the purchase of supplies, except in special instances not related to the car problem. Railways admittedly have the right to purchase fuel and other supplies where their judgment suggests. They require this right in order to obtain deliveries at points most convenient for use, economize haul and storage, avoid congestion, select fuel most desirable to meet varying conditions and power requirements, and promote efficiency and economy in general. Coals differ greatly in quality and condition, depending on the seams operated, methods of operation, and preparation, even as among mines on the same seam in the same locality. The percentage of carbon and volatile matter, firmness of texture or friability, and whether free or slow burning are important factors affecting efficiency and economy in coal use. The amount of dirt present because of bad roof or floor or partings or of careless mining methods is of importance; also whether the ash content is high or low, and the fusing point of ash—whether so high that the ash

readily escapes through the grate or so low as to fuse, clog the grate, shut off draft, and cause delays and engine failures. The importance of these various factors depends very largely upon the conditions under which coal is used. For these reasons the quality and condition of coal which different roads can use with efficiency and economy depends upon their peculiar operating conditions and the traffic which they handle. On carriers of light traffic density, high percentage of level track, easy curves, and steady regular evenly sustained train movement, the fuel problems are much less serious than on carriers with greater traffic density, heavy grades, varying profile, high degree of curvature, demand for steam fluctuating greatly during short periods because of operating conditions, necessity for high speed, traffic congestion, frequent meetings, and numerous delays. The conditions under which coal is used in the fire box of a locomotive are more difficult than those to which coal is subjected in any other use. Grate space is limited. Rapid conversion of heat units into available energy in small area is required, particularly under the severe conditions last mentioned. On a level railroad even steam pressure and even fires, making for efficient use of fuel, can be maintained. Under conditions of fluctuating power demand upon a locomotive, fuel consumption to maintain power sufficient for recurring periods of need means waste of fuel during intervals between. So on some carriers a free-burning coal with which steam can be generated quickly is desirable. Careful preparation, dependable quality, and condition are of great importance. Because of necessity for forced draft, quick burning, and rapid conversion of heat units, the percentage of loss in cinders through the stack and in unconsumed gases is greater in locomotives than under other boilers. As coal is used under a locomotive, less than 10 per cent. of its heat units are converted into powre available at the drawbar. The public interest requires that carriers select their coal with discrimination, and because of varying conditions genearl rules can not be applied to them. While under the law carriers have the right to buy all supplies, including coal,

where they please, the majority report destroys this right by saying in effect that they shall not use their own cars to haul their fuel unless they distribute their purchases among all mines.

How will the rule of the majority report affect a railroad which is dependent for its fuel upon mines located on foreign lines, and requires during the year at a particular junction, say, 500,000 tons of coal? The natural course for such a buying road, considering its own best interests and acting in a sensible and businesslike manner, would be to select its coal from particular mines, having regard to quality, reliability of deliveries, and price, and place its orders among a few mines. If the equipment to handle the coal is to be furnished by the originating carrier, that carrier will be under obligation to make *pro rata* distribution of its equipment. The purchasing carrier cannot know what would be the available equipment from time to time or how, in order to insure deliveries, its contracts should be distributed. Shortage in deliveries would subject it to the uncertainties of the spot market and it would have to increase its price when coal is in demand. The sensible course would be for such a buying carrier to furnish its own equipment in which to haul its coal. But, if this course were followed, all cars in excess of the general percentage distribution would have to stand idle. That would defeat the purpose for which the foreign line provided the equipment, and knowledge that such a practice would be followed would naturally deter foreign lines from purchasing equipment, although present conditions demand such purchases. Commissioner Hall points out what recently happened to such a carrier. It is likely to happen to any carrier at any time, and certainly will happen often.

Coal contracts generally contain provisions to the effect that the producers are not responsible for delays due to car shortage and strikes, thus exposing the buyer to these serious contingencies. A mine may have capacity for an output of 50,000 tons per month. One about to contract for coal, judging from past experience, would conclude or guess upon

a 50 per cent. car supply or an actual output of 25,000 tons per month. Any reduction below this figure in the actual output because of car shortages which could not be foreseen (and they always occur) would result at best in a *pro rata* reduction of deliveries under all contracts. A consumer dependent upon a *pro rata* delivery of cars cannot possibly foresee what deliveries will be. If coal must be had regularly, the consumer must go into the spot market unless he has available for his use assigned or private cars over which he has absolute control. Railroads and public utilities are such users. The fact that there is in the country an enormous surplus of developed and equipped mines beyond the need makes reliability of car supply impossible *so long as cars must be prorated.* In times of increased demand output is increased and calls for coal cars are increased. Unless cars are assigned, the available equipment must be distributed according to the traffic offered for shipment. No one can foresee what traffic at any particular time is to be offered, and no one can anticipate what the car supply will be. Ownership by foreign lines of cars sufficient to insure delivery of their coal supply and the right to restrict their use is essential to protect carriers against a fuel shortage, insure the observance of contracts, and the purchase of coal at advantageous prices. The mere purchase of cars by foreign lines without their assignment will not afford protection, for they would have to go with the general pool.

It is well known that mines assured of continuous operation favorable for low production costs will contract at lower prices. Opponents of the assigned and private car object to that desirable result. In order to maintain unhealthy and uneconomic conditions in the coal-mining industry they contend that they should have a part of the order of the buying road at high prices, although the interests of the general shipping public, which pays the carrier's coal bill, requires low fuel prices. The opponents of the private and assigned car demand that the interests of the many be sacrificed for the interests of the few, and we have sustained them. Such is the gist of this entire controversy. Instead of prohibiting

assigned and private cars their use should be encouraged. The greater the number of assigned and private cars properly used and the fewer the mines at which they are placed, the better for all concerned. If many shippers would provide their own cars, the carrier equipment available for others would be greatly increased, and the price of coal would drop. If this commission would announce the right of shippers to use private cars in their own service, reasonably regulated to restrict their use to particular mines for long periods, and that as thus used they would be protected, private capital would promptly come to the aid of the carriers and provide private cars to an extent which would insure ample equipment for all, reduce coal shortages to a minimum, and serve the public interest in a vital way.

The interstate commerce act gives us emergency powers. It licenses as a necessary evil the abomination of priority orders. Whenever there is a coal shortage we are required to resort to these powers in the interest of carriers, public utilities, hospitals, etc., which everybody recognizes must under all circumstances have fuel. Cars dealt with in emergency orders are withdrawn from general use at times when most needed. So used they cause confusion and disturb the market. With permission and protection for private cars, their use would be known and be counted upon and would affect no one injuriously. The shipping public stands ready to augment the general car supply and eliminate the necessity for emergency priority orders largely if not entirely. The majority report requires continuance of the abomination. Whenever because of car shortage it is thought that the assigned car would hurt we will have to at that time come forward and do more harm with an emergency order.

Railways and public utilities which consume coal in large quantities in times of shortage are recognized as entitled to preferential treatment. Now, in times of emergency, they are placed ahead of the general public. If given permission to do so, they will so equip themselves that they can be considered last. It would seem obvious that in the public interest the policy of efficiency and economy enjoined by law

requires that consuming carriers provide equipment for their fuel, and that such equipment be devoted to their use at such mines as in the exercise of good business judgment should be selected as best suited. The majority report forbids this sensible businesslike practice. The statement in the majority report regarding the experience of the New Haven Railroad in the purchase of spot coal on the one hand and the use of the assigned car to take coal under contract on the other is strong condemnation of the conclusions at which the majority report arrives.

The majority report ignores the aspect of the assigned and private car as a storage facility. Admittedly a carrier is at liberty to provide itself with facilities for the storage of coal and such is the carrier's duty within reasonable limits. Vast expenditures would be required to establish facilities to store coal in considerable quantities at various points. There are no regular periods of surplus and too much storing would convert periods of surplus into periods of shortage. Costs of handling fuel in and out of storage are substantial. Much coal thus stored would require removal to other points for consumption. The most economical storage facilities, all things considered, up to a certain amount, are bins containing from 50 to 100 tons, with wheels under them, to facilitate prompt and economical handling and movement as required. While the carrier is at liberty to install inefficient and inconvenient stationary storage bins, the majority report denies the right to provide storage bins on wheels (cars) if such are to be sent to the mines for coal and used to transport coal from the mines, even though such use would add to the available equipment and to that extent release cars for other commercial use.

Just how industry will get along without the private car it is difficult to see. The common carrier and the public utility can be taken care of after a fashion through emergency orders, but at great inconvenience and expense to everyone else. Not so with a private industry. Take, for illustration, a large steel plant, upon the continuous operation and financial success of which many thousands are dependent for employ-

ment and more thousands are dependent for low-priced commodities produced at low cost. Such an industry may use a thousand tons of coal and coke per day and require deliveries every day. Economy and certainty of fuel constantly, suggests that it control its source of supply. It operates its own mines and coke ovens, which are 10, 50, or hundreds of miles away. Fluctuating demand on carrier equipment and uncertainty of carrier supply have compelled it to buy cars, which the railway hauls back and forth. It now enjoys continuous operation. The majority report says that no matter how many cars the indutsry has, it can not use any greater percentage for its requirements than the railway is able to furnish to all mines on its line for their requirements. Its extra cars must stand idle or it must divide all of its cars among all mines on the carrier's line and itself take only a *pro rata* share. The number of its own cars that it may use will not depend upon its own need but upon the need of others. When there is only a 50 per cent. car supply for other mines, it must reduce its operation 50 per cent. and shut down half of the time. Labor must be thrown out of employment, manufacturing costs must soar, and the whole country must suffer, because there are too many mines, and in order that mines that ought not to exist may continue to live at public expense. Seemingly, if the rule is to apply to coal, it must apply to other things and cars used for other supplies must be surrendered to the general pool.

We might well consider the effect of the rule of the majority report upon an industry like the Ford Motor Company, which employs, I believe, something like 70,000 men and which, because of its efficiency, is able to pay high wages and produce at low costs. It might well be that such an industry would find that steady employment of its men and their scale of wages and the low cost and selling price of its output would be imperiled by an uncertain car supply, increasing fuel costs, and unsatisfactory quality of available coal. (General information now current suggests the use of the Ford Motor Company as an illustration.) Good

management in the interest of all concerned would suggest the acquisition of coal mines and the application of methods of high efficiency in their operation. The use of private cars assigned to particular mines would seem to be indispensable. The majority report bars them. It supports coal operators who would force the Ford Company to buy coal that would not suit its purpose and pay high prices because of high costs which Ford management would reduce. It says that inefficient mines which should not exist must be supported at the expense of the Ford Company, its employees, and the purchasers of its product. This illustration is typical of what the majority report will do throughout the entire industrial world.

Under the majority report railways having mines on their own lines cannot use their own cars to protect their coal supply, and if there is only a 50 per cent. car supply for all, they must have only 50 per cent. of their requirements. They, too, must shut down in times of shortage or depend on storage, which in large quantities beyond a reasonable point can be accomplished only at great cost. Similarly, if we are consistent, cars used for other supplies, such as for ballast, must be prorated, even though maintenance work must stop. The only escape from these results is through confiscation or emergency orders, which at best would interfere with the car supply for mines generally more than would cars regularly assigned, and which the commission has heretofore consistently condemned.

There is another aspect of the assigned and private car more important, it seems to me, than all the rest. So far little consideration has been given to what is the basic vice in the whole coal situation. We have within our reach and subject to our will one of the roots of economic and industrial disturbance. With opportunity to uproot the evil, the report nurtures it and attempts only to find a way to get along in spite of it. We should destroy it, and the assigned and private car will help to do it.

The conditions which prevail in the bituminous-coal industry have been going steadily from bad to worse during the last decade. They are a wasteful burden on economic

life and breed discontent in our social order. Responsibilities are so scattered and faults are so widespread that individual endeavor can not supply a remedy. The allurements of profits have led to gross overexpansion. With national need for about 10,000,000 tons a week, the capacity of developed and equipped mines is more than 20,000,000 tons per week. The investment in development and equipment and all that goes with mining operations is more than twice the need if the industry were carried on so as best to serve the public interest. Excess capacity beyond what the market demands means idleness in the same ratio of mines, equipment, and men. An excess investment of more than 100 per cent. would bring ruin to any other enterprise. All of the excess burdens are distributed over the actual output of running time and are borne by the consumer in the price he pays for coal. Profits have not been great, as a rule, in coal production, and with reasonable production costs would not make the selling price excessive. High coal prices are due mainly to excess production costs, which are caused by the excess capacity developed, maintained, and operated.

Not only are mines developed and equipped to produce 20 million tons of coal a week but men sufficient to mine 20 million tons of coal per week are being supported by the industry. Mines can not run full time because 11 or 12 million tons of coal a week for a considerable period would glut the market. They therefore run only two and three days per week. In order to support men working on half time costs per ton have so increased that mine wages are out of all proper relation to wages paid on the farms and by railroads and other industries. Common laborers make $7.50 per day, loaders make from $15 to $18 per day, runners of cutting machines make from $18 to $20 per day, runners of gathering locomotives make from $18 to $20 per day. The result is that to produce coal is costing upward of $2 per ton, whereas 10 years ago it was only costing about 75 cents per ton.

Millions upon millions are being spent to provide additional mining capacity in face of the fact that every mine

opened and every ton of additional capacity developed makes matters worse. No check is being applied. The sedatives of price, fixing, zoning, and regulated distribution have been administered, but they do not reach the trouble. Reduction of high coal-production costs is a public necessity. A proper reduction of producing costs to a normal level should make a direct saving to the country in the price of coal of from $500,000,000 to $750,000,000 per year and much additional indirect saving. An amount equivalent to a contribution of perhaps upward of $10 per annum by every man, woman, and child in the country is being handed over to the coal producers in order to maintain mine employees as a favored class and mine operations as a favored industry.

Costs and selling prices can be brought down through control of transportation. If transportation were available to handle 11 or 12 million tons of coal steadily the surplus of available coal would break prices by forcing competition among producers, would close up high-cost mines, concentrate activity in 50 or 60 per cent. of the mines, furnish steady employment at fair wages to the right number of men who should be engaged in coal mining and release the surplus for other industries where they are needed, reduce transportation cost, and break the vicious circle of high prices. A surplus of 10 per cent. above the market demand for any article of commerce represents the difference between a price-raising shortage and a price-lowering surplus. A sustained surplus of coal will bring reduction. Everything is favorable for that surplus except transportation.

Increased available transportation can be obtained only through the acquisition of additional equipment or by increasing the efficiency with which existing equipment is handled. The question as to whether carriers should provide additional equipment is involved in another proceeding which is pending before us. At the present time they are making unparalleled expenditures to better equip themselves to render service. There is doubt whether it is to their interest to increase their investment in coal cars and

whether the public which in the end pays the carrying charges can afford to have them do so.

It would seem that railways should not be expected to do more than take care of the transportation demands of industry and commerce as normally carried on. As thus carried on, need for transportation can be foreseen and reasonably met. Railroads are not responsible for the uncertainties and fluctuations in the demands of the business world for transportation. They should not be expected to be ready to move all traffic promptly during abnormal periods of transportation demand following abnormal periods of inactivity, as where a coal strike has prevented the shipment of coal which carriers were ready to haul. It would not be in the public interest that carriers at all times be equipped to handle abnormal peak loads. Sufficient facilities to handle promptly at all times the tonnage offered would mean an enormous investment that would be idle most of the time. The carrying, maintenance, and depreciation charges would be too high for a legitimate business enterprise to stand and the rates that would be required would be prohibitive.

Transportation is a step in the process by which agriculture, manufacture, and commerce carry on the national industry. Its cost is a part of the nation's operating expense. Shippers pay for it and the greater the cost the greater the shipper's burden. Therefore, the interests of all demand an efficient transportation machine wisely constructed and economically operated. Obviously the most efficient operation is continuous regular operation evenly distributed throughout the year. The coal movement under normal conditions is spread fairly evenly over the 12 months, although a little more than half the annual movement is transported in little less than half the time. Ten million tons a week will take care of consumers' demands. With moderate provisions for storage consumers can, without any unreasonable burden, take deliveries evenly distributed over the year of approximately 10 million tons a week. The railways with their present equipment kept in good order can handle efficiently and economically 10 million tons per

week. Considering, therefore, only the volume of coal necessary to meet consumers' needs, the carriers are now fairly well equipped to handle that volume moving under normal conditions. It is difficult then to see why, in justice to the carrier and in justice to the shipping public as a whole, which carries the burden, there should be enlargement of carrier facilities to meet abnormal conditions for which the carriers are not responsible. Logically, those at fault for abnormal conditions should pay for the inconvenience which they cause. In other words, the coal industry and not the railways should be held responsible and the troubles should be laid at the door of the coal producers, not the carriers. The real trouble with the coal situation is that there are too many mines in operation.

Increased efficiency in the use of existing equipment rather than more equipment is the urgent need. One way to bring it about is by revision of the rate structure and another way is by the increased use of assigned and private cars. Much that is wrong in the coal situation is due to following unsound methods in rate making, over which we have control and for which we are responsible. Abnormally low rates on long hauls are much to blame. Considerable can be done through cautious revision of the rate structure to remove unnatural adjustment with due regard for all entitled to consideration. Increased utilization of short-haul mines would increase efficiency and reduce costs in both mining and transportation. But that problem is not here. There is here the problem of car distribution—use of the assigned and private cars.

It must be borne in mind that we have just as much power to authorize and approve *unequal* distribution as we have to require *equal* distribution. The majority report recognizes that the law does not require equal distribution but contemplates that conditions may require unequal distribution. The power is left with us to authorize what, all things considered, we deem just. Only unjust discrimination is to be condemned. Public interest now requires discrimination in the use of cars and that they be assigned to particular mines. Equal distribution among

all mines which the majority report requires is exactly what should not be had. What the country and the consumers of coal really require is an unequal distribution which will give the public the benefit of the economical low-cost mines and not compel them to support uneconomical high-cost mines. A sort of zoning is what is needed, perhaps more now than in war times. The proper use of the assigned and private car is a sound, sensible, business-like method of zoning. Expectation of equal distribution, even more, perhaps, than an unsound rate structure, has brought about the undue expansion in coal production. If the use of cars had been properly restricted, half of the existing mines would not exist. The majority report will make bad conditions worse. Under it the expansion hostile to the public interest may go on, justified, encouraged, supported, and unchecked.

Some people seem to be overlooking the fact that industry generally does not function for the benefit of mines. Consumption does not take place for the purpose of keeping mines in operation. Fuel is produced for consumption, not consumed for production. It is the public consuming need and not the private producing need that justifies the industry and consumers' rather than the producers' rights are to be considered first. Consumers have the right to demand efficient and economical production and transportation.

No industry that tolerates unnecessary expense should expect to prosper, and the coal industry could not survive if it were not able to pass on to consumers the consequences of the industry's mismanagement. The industry should clean house. Many want to clean house. They can not do it alone. We have the power to assist the worthy and compel the unworthy through revision of the rate structure and the extended use of the assigned and private car. We should do what the consumers' interests require and almost, it might be said, forget the producer. We should construe the law as directing us to require the use of equipment as public interest demands to best serve the fuel need.

The immediate answer to the problem is the assigned

and private car. They will bring about continuous operation of efficient mines at low cost. There are many concerns which, if permitted, will furnish private cars. It has been brought to our specific attention that this is true of distributors in New England. Permit them the use of the private car and the New England coal problem will lose its serious aspect and the coal bill will be reduced. Many public utilities throughout the country using large quantities of coal would operate their own mines or contract for entire mine output, thus insuring dependable supply and continuous operation at low cost. Men would drift to mines thus continuously operated, which is what should take place. High-cost mines would have to shut down, and that is exactly what the existing situation calls for.

Every dollar that the private shipper puts into cars saves just that much railroad burden and to that extent serves the public interest by reducing the public's cost of carrying the railroads. Many consumers and shippers can afford to invest in private cars, because they will make savings that will compensate them. The ownership of cars does not place a burden on the consumer, but, in fact, lifts it. The saving in the cost of coal production will more than offset the investment in cars.

Nor does the use of private cars discriminate in any real sense against the coal producer. He is entitled to equal distribution of all of the railway equipment except as the carrier needs to use its equipment preferentially for fuel with which to serve all shippers. He is entitled to have the carrier equip itself with that reasonable amount of equipment which a carrier should own. He is not entitled to ask the carrier to provide an abnormal excessive amount to overcome the consequences of bad management of the coal industry. In addition to the equipment which a carrier should own, the equipment to handle abnormal peak loads should be provided by shippers, and they will gladly provide it if given permission. Let each producer have his full share of company equipment, but let private producers furnish additional cars for their exclusive use, provided they are used continuously at particular mines and not shifted around from place to place for the purpose of

breaking prices. I am not certain but that the shifting would be a good thing if it would result in breaking prices. The point I make, however, is that the mine operator is not entitled to any more than his share of the carrier's equipment. He is not entitled to say that no shipper shall own private cars without sharing them with all others.

The claim that the railways are to blame for high wages and other mine costs, because they do not furnish cars for continuous operation, has no foundation. The mines alone are to blame, because of their excessive number. If they could increase production they could not market it. If there were a full car supply for everyone, no more coal would be sold and the mines would be just as bad off as they are to-day. The only effect of an increased car supply would be to reduce prices by increasing competition for the consumers' market. The problems are commercial. For them the mines are to blame, and not transportation, for which the railways are responsible. More cars in the aggregate is what the mines do not want. What they want is to compel buyers to distribute their orders. There would be just as much logic in demanding that carriers so distribute the purchases of all materials and supplies, and, in fact, that all consumers distribute all their purchases among all producers.

Perhaps I have gone outside of the record in discussing this case. I do not agree with the statement in the majority report that we are confined to the record in the sense that we must make a report in accordance with it. This proceeding is an investigation upon our own motion. The burden is upon us to make a proper record. An insufficient record does not justify an unsound decision. It is a duty to go outside of the record, if need be, in order to protest against the record and an improper decision based upon it.

While the Congress, executive officials, and all sorts of committees and commissions are trying to find a way to correct the evils in the bituminous-coal world and break the vicious circle of high prices, it seems to be overlooked by everyone, including ourselves, that we have real power

with which we can do something. We know what should be done and are in position to do it. In our treatment of the assigned and private car we are throwing away an important portion of our power. In what we would be required to do to get results, no invasion of any right would be involved and no serious question would arise. We would interfere with no one and discriminate against no one. All we need do is to permit all shippers who want them to possess and use private cars in carrying on their own business. With this right recognized and protected, the coal world itself would remedy the evils.

Cox, *Commissioner*, dissenting:—

I am unable to concur in the finding of the majority that the present practice of assigning private cars and system or foreign-line cars for railroad fuel to coal mines is unreasonable or unduly prejudicial, and I find justification for the following dissenting opinion from a recital of facts from the majority report.

It is generally recognized that nothing is more important to our industrial development or national prosperity than the transportation systems of our country, and one of the important factors in the efficient and economical operation of the railroads is the question of a regular and certain supply of railroad fuel at reasonable prices. It has been stated that the assigned car enables the carrier to secure a regular and uniform supply of fuel, permits the placing of contracts for yearly consumption at reasonable prices, makes confiscation unnecessary, and does not force the carrier into the spot market for its fuel, which necessarily increases the price not only to the carrier but to the consuming public as well.

On page 535 of the majority report, the following appears:—

> "It is recognized that the importance of the railroads in the distribution of coal and other commodities, and their general dependence upon bituminous coal in producing transportation, requires that in some lawful way they may be assured of a steady supply of suit-

able coal. It is likewise generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires. There is no dissent from the proposition that confiscation of fuel coal by railroads is a practice to be avoided. It seems to be generally accepted that the public interest requires that the carriers shall not be subjected to unreasonable prices.

* * * * * * *

"There is enough bituminous coal in the ground in this country to more than supply the demands of all consumers for a long period. There are more than enough miners to produce coal for all purposes. There are more mines than is consistent with the most efficient use of equipment, and their aggregate capacity exceeds greatly the country's demand. * * * The aggregate time lost because of car shortages, local and general, is a considerable proportion of the whole of any recent elapsed period of time. And during each period of car shortage the practical problem of supplying the railroads with fuel has been presented sharply, and the meeting of the problem has been most troublesome, and has necessarily involved considerable disturbance of production and transportation."

and again, on page 537:—

"The president of the railroad company testified that the assigned cars were essential for the following reasons: (1) They gave the carriers a regular and certain supply of coal in times of car shortage. (2) The coals from different fields are not of the same grade, which requires that certain adjustments be made in the locomotives. The Alabama coal is a different grade from that mined in southern Illinois, and again, the coal in different counties in Illinois has different burning qualities. (3) Unless the carriers can con-

tract for a regular and suitable supply of coal, resort to confiscation becomes necessary. (4) Going into the spot market would increase the price of coal, not only to the carrier but to the consuming public as well."

Page 538:—

"The assigned car, the New Haven claims, enables it to secure a uniform quality and grade suitable for its requirements and favorable to good service; permits the placing of contracts for yearly consumption at reasonable prices; requires the use of a minimum number of cars on consuming line in its fuel service; results in an increase in the number of cars available for commercial loading; reduces unloading costs, as the unloading facilities and types of cars are each adapted to the other; affords a greater opportunity for solid train movement of empties and loads; and affords a better standard of maintenance and equipment on account of system cars being more regularly at home."

Page 539:—

"A plan has been worked out through the use of the assigned car whereby coal produced in a certain territory will go to the same divisions continuously, and this, it is urged, results in increased efficiency. Any change in the assignment of coal lowers the efficiency of the motive power. With the assigned car the Baltimore & Ohio used an average of about two grades of coal on a division. During the strike period in 1922 it was necessary to use about 18 to 20 different grades, and the performance of the motive power was unsatisfactory."

Page 546:—

"If a foreign carrier were not permitted to assign its own cars to a coal-loading carrier, the latter would be under the primary duty of supplying cars at the mines. There would follow a reduction in the supply

available for the commercial mines, because of the necessity for spreading the cars that were at hand over a wider field. * * * For that reason the carriers claim that such cars are a distinct advantage to the commercial operator."

Page 551:—

"Mine operators prefer to have the assurance that cars will be furnished for railroad fuel coal, and a promise of this character is one of the factors which influences the making of the contract. If the operators do not have this assurance, there would be a higher price."

Page 558:—

"Under the impetus of the war demand for coal and prolonged coal-car shortages, the ownership of private coal cars increased. There can be no doubt the incentive was the more regular and larger car supply provided under the operation of the assigned-car practice."

Page 559:—

"It is abundantly made clear from the record that as competition becomes more keen more and more the public utilities, steel producers, manufacturers of by-product gas, automobile manufacturers, certain chemical manufacturers, glass works, and other industries likewise absolutely dependent upon a steady supply of coal, rather than face ruin each recurring coal-car shortage, will be compelled to acquire private cars which they may have assigned."

I can not consistently condemn a rule or policy which in its application lends itself to the more efficient and economical operation of both mines and railroads and which in time of emergency must of necessity be applied in order to meet the urgent and imperative needs of the carriers and public utilities particularly, and of the public generally.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of June, A. D. 1923.

No. 12530.

In re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

The Algoma Central & Hudson Bay Railway Company; Algoma Eastern Railroad Company; Apalachicola Northern Railroad Company; Angelina & Neches River Railroad Company; Alton, Granite & St. Louis Traction Company and F. E. Allen, Receiver; Alton, Granite & St. Louis Traction Company and W. H. Sawyer, Receiver; Arcade & Attica Railroad Corporation; Aroostook Valley Railroad Company; Ashland Coal & Iron Railway Company; Augusta & Aiken Railway Company; Batesville South-western Railroad Company; The Belt Railway Company of Chicago; Benton Harbor-St. Joe Railway & Light Company; Big Sandy & Kentucky River Railway Company; Birmingham, Columbus & St. Andrews Railroad Company and A. D. Campbell, Receiver; Blytheville, Burdette & Mississippi River Railway Company; Buffalo & Susquehanna Railroad Corporation; Cairo, Truman & Southern Railroad Company; The California & Oregon Coast Railroad Company; Central New York Southern Railroad Corporation; Central Railway Company of Arkansas; Chicago & Illinois Midland Railway Company; Chicago, Lake Shore & South Bend Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Chicago & Western Indiana Railroad Company; Chicago, Peoria & St. Louis Railroad Company and B. Wilson, Receiver; Chicago, Peoria & St. Louis Railroad Company and W. Cotter, Receiver; Cleve-

land, Southwestern & Columbus Railway Company; Clinton & Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company, Combs, Cass & Eastern Railroad Company; Crittenden Railroad Company; The Dayton & Troy Electric Railway Company; Deep Creek Railroad Company; Detroit & Mackinac Railway Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; The East Jordan & Southern Railroad Company; East St. Louis & Carondelet Railway Company; East St. Louis & Suburban Railroad Company; East St. Louis Belt Railroad Company; The East St. Louis Connecting Railway Company; East St. Louis Railway Company; El Paso Southern Railway Company; Erie & Michigan Railway & Navigation Company; The Fairport, Painesville & Eastern Railroad Company; Fonda, Johnstown & Gloversville Railroad Company; Fort Wayne & Northwestern Railway Company; The Denver & Salt Lake Railroad Company and W. R. Freeman, Receiver; The Denver & Salt Lake Railway Company and C. Boettcher, Receiver; The Glady & Alpena Railroad Company; Granite City & Madison Belt Line Railroad Company; The Gulf & Sabine River Railroad Company; The Hagerstown & Frederick Railway Company; The Illinois Southern Railway Company; Illinois Transfer Railroad Company; The Indianapolis & Louisville Traction Railway Company; International Railway Company; Interstate Car Transfer Company; Interstate Public Service Company of Indiana; Indiana Railways & Light Company; Kalamazoo, Lake Shore & Chicago Railway Company; Kanawha, Glen Jean & Eastern Railroad Company; Kane & Elk Railroad Company; Kansas City, Clay County & St. Joseph Railway Company; Kelly's Creek Railroad Company; Lake Erie & Fort Wayne Railroad Company; Lake Providence, Texarkana & Western Railroad Company; Leetonia Railway Company; Lehigh & Hudson River

Railway Company; Lime Rock Railroad Company; Louisiana Railway & Navigation Company; Louisville & Southern Indiana Traction Company; Macomb, Industry & Littleton Railway Company; Missouri & Northern Arkansas Railroad Company and C. A. Phelan, Receiver; Madison, Illinois & St. Louis Railway Company; Manufacturers Railway Company (of St. Louis); Manistee & Northeastern Railroad and The Michigan Trust Company, Receiver; Marinette, Tomahawk & Western Railroad Company; Mariana & Blountstown Railroad Company; Miami Mineral Belt Railroad Company; Michigan Ammonia Works; Missouri & Illinois Bridge & Belt Railroad Company; Monson Railroad Company; Mount Hood Railroad Company; Muskogee Electric Traction Company; Nevada Copper Belt Railroad Company; Nevada Transportation Company; Oil Fields Short Line Railroad Company; The Oklahoma, New Mexico & Pacific Railway Company; Pacific & Arctic Railway & Navigation Company; Pajaro Valley Consolidated Railroad Company; Paris & Mount Pleasant Railroad Company and W. H. Wortham, Receiver; Petaluma & Santa Rosa Railroad Company; Rio Grand & Eagle Pass Railway Company; St. Joseph Belt Railway Company; St. Louis & Belleville Electric Railway Company; St. Louis & East St. Louis Electric Railway Company; St. Louis & O'Fallon Railway Company; St. Louis Belt & Terminal Railway Company; St. Louis Bridge Company; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis Terminal Railway Company; St. Louis Transfer Railway Company; The St. Louis, Troy & Eastern Railroad Company; Salt Lake & Ogden Railway Company; The Santa Fe, Raton & Eastern Railroad Company; Sardis & Delta Railroad Company; Savannah & Atlanta Railway Company; Sewell Valley Railroad Company; Sheffield & Tionesta Railway Company; Sioux City Ter-

minal Railway Company; South Georgia Railway Company; Southern New York Power & Railway Corporation; Sumpter Valley Railway Company; Susquehanna & New York Railroad Company; Tennessee, Alabama & Georgia Railroad Company and C. Hicks, Receiver; Tennessee, Kentucky & Northern Railroad Company; Terminal Railroad Association of St. Louis; Terminal Railroad of East St. Louis; The Texas Company; Tidewater & Southern Railway Company; The Toledo & Western Railroad Company and J. F. Johnson, Receiver; The Toledo & Western Railroad Company and H. A. Dunn, Receiver; The Toledo, Angola & Western Railway Company; The Toledo, Bowling Green & Southern Traction Company; Trona Railway Company; Tunnel Railroad of St. Louis; Tionesta Valley Railway Company; The Union Depot Company of St. Louis; The Union Railway & Transit Company of Illinois; Upper Merion & Plymouth Railroad Company; Utah-Idaho Central Railroad Company; Washington, Idaho & Montana Railway Company; Washington Coal & Coke Company; Waycross & Southern Railroad Company; West Chester, Kennett & Wilmington Electric Railway Company; Western Allegheny Railroad Company; Western Chemical Manufacturing Company; Western Ohio Railway Company; The Western Pacific Railroad Company; Wheeling Traction Company; Wichita Falls, Ranger & Fort Worth Railroad Company; Wiggins Ferry Company; Willamette Valley Southern Railway Company; Wilkes-Barre & Hazelton Railway Company; Wisconsin & Michigan Railroad Company; Wyoming & Missouri River Railroad Company; Yakutat & Southern Railway Company; Central Indiana Railway Company; River Terminal Railway Company; St. Louis Bridge & Terminal Railway Company; Munising, Marquette & Southeastern Railway Company; Lake Superior & Ishpeming Railway Company; Ann Arbor Railroad Company; Atlantic Port Railway Company; Balti-

more & Cumberland Valley Railway Company; Baltimore & Cumberland Valley Railroad Company; Baltimore & Cumberland Valley Railroad Extension; Baltimore & Harrisburg Railway Company; Baltimore & Harrisburg Railway (Eastern Extension); Baltimore & Harrisburg Railway (Western Extension); The Beaumont, Sour Lake & Western Railway Company; Benwood & Wheeling Connecting Railway Company; Bessemer & Lake Erie Railroad Company; Birmingham Southern Railroad Company; Brownsville & Matamoras Bridge Company; Canton Railroad Company; Chicago & Calumet River Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, Receiver; Chicago & Illinois Western Railroad; Chicago & Kenosha Railway Company; Chicago & Southeastern Railway Company; Chicago, Lake Shore & Eastern Railway Company; Chicago, Milwaukee & Gary Railway Company; Chicago, North Shore & Milwaukee Railroad; Connellsville & Monongahela Railway Company; The Denison & Pacific Suburban Railway Company; Denver & Rio Grande Railroad Company and A. R. Baldwin, Receiver; Donora Southern Railroad Company; The Duluth & Iron Range Railroad Company; The Duluth & Northern Minnesota Railway Company; Duluth, Missabe & Northern Railway Company; Elgin, Joliet & Eastern Railway Company; Elwood, Anderson & Lapelle Railroad Company; Etna & Montrose Railroad Company; Hannibal Bridge Company; Houston & Brazos Valley Railway Company and G. C. Morris, Receiver; Hudson & Manhattan Railroad Company; Interstate Utilities Company; Johnstown & Stony Creek Railroad Company; Joliet & Blue Island Railway Company; The Lake Terminal Railroad Company; Louisiana Southern Railway Company; Louisville, New Albany & Corydon Railroad Company; McKeesport Connecting Railroad Company; The McKeesport Terminal Railroad Company; Manistique & Lake Superior Railroad Company;

Meadville, Conneaut Lake & Linesville Railroad Company; Mercer Valley Railroad Company; Milwaukee, Bay View & Chicago Railroad Company; Monongahela Southern Railroad Company; Morristown & Erie Railroad Company; Newburgh & South Shore Railway Company; The New Castle & Lowell Railway Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railway Company; Northern Liberties Railway Company; Opelousas, Gulf & Northeastern Railway Company and W. H. Peterman, Receiver; The Orange & Northwestern Railroad Company; Pencoyd & Philadelphia Railroad Company; Pere Marquette Railway Company; Pittsburgh & Ohio Valley Railway Company; Pittsburgh, Allegheny & McKees Rocks Railroad Company; Pittsburg, Bessemer & Lake Erie Railroad Company; Pennsylvania Ohio Power & Light Company; Pennsylvania Ohio Electric Company; Prattsburgh Railway Corporation; The Rio Grande Southern Railroad Company; St. Clair Terminal Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Brownsville & Mexico Railway Company; St. Louis Southwestern Railway Company of Texas; Sharon Connecting Railroad Company; The Sharon & New Castle Street Railway Company; The Sharon Railway; Slackwater Connecting Railroad Company; Southwestern Gas & Electric Company; The Texas & Pacific Railway Company and J. L. Lancaster, Receiver; The Texas & Pacific Railway Company and C. L. Wallace, Receiver; Trans-Mississippi Terminal Railroad Company; Union Railroad Company (Pennsylvania); Western Maryland Railway Company; Youghiogheny Northern Railway Company; The Youngstown & Northern Railroad Company; Arkansas Central Railroad Company; Coal Belt Electric Railroad; Fort Smith Suburban Railway Company; Iron Mountain Railroad of Memphis; Little Rock Junction Railway; Marion & Harrisburg Railway Company; Marion & Johnstown City Railway Company; Mis-

souri Pacific Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; Natchez & Louisiana Railway Transfer Company; Natchez & Southern Railway Company; Union Railway Company (Memphis); International & Great Northern Railway Company and J. A. Baker, Receiver; Addison & Susquehanna Railroad Company; Barre & Chelsea Railroad Company; Belfast & Moosehead Lake Railroad Company; Boston & Albany Railroad Company (The New York Central Railroad Company, Lessee); Boston & Maine Railroad; Bridgeton and Saco River Railroad Company; The Buffalo Creek Railroad Company; Buffalo & Lake Erie Traction Company and G. Bullock, Receiver; The Central Union Depot & Railway Company of Cincinnati; Chester & Becket Railroad Company; Chicago, Kalamazoo & Saginaw Railway Company; The Cincinnati Northern Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Coos Valley Railroad Company; The Dayton Union Railway Company; Delaware, Susquehanna & Schuylkill Railroad Company; Detroit Terminal Railroad Company; Dexter & Newport Railroad Company; Dexter & Piscataquis Railroad Company; Eastern Maine Railroad Company; Eastern & Northern Railroad Company; European & North American Railway; Evansville, Indianapolis & Terre Haute Railway Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Fulton Chain Railway Company; Indiana Harbor Belt Railroad Company; Jersey City Belt Line Railroad Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; The Lackawanna & Montrose Railroad Company; Lake Erie, Alliance & Wheeling Railroad Company; The Lake Erie & Western Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Railroad Company of New Jersey; Louisville & Jeffersonville Bridge & Railroad Company; Loyalsock Railroad Company; Maine Central Railroad Company; The Michigan Central

Railroad Company; Montpelier & Wells River Railroad; Newark Bay Railroad Company; New York & Ottawa Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; Ottawa & New York Railroad Company; The Peoria & Eastern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; The Portland & Ogdensburg Railway; Portland & Rumford Falls Railroad; Portland & Rumford Falls Railway; Portland Terminal Company; Raquette Lake Railway Company; Rumford Falls & Rangeley Lakes Railroad Company; Rutland Railroad Company; St. Johnsbury & Lake Champlain Railroad Company; St. Joseph, South Bend & Southern Railroad Company; St. Lawrence & Adirondack Railway Company; Sandy River & Rangeley Lake Railroad; The Schuylkill & Lehigh Valley Railroad Company; The South Buffalo Railway Company; Sullivan County Railroad; The Sussex Railroad Company; The Syracuse, Binghamton & New York Railroad Company; The Toledo & Ohio Central Railway Company; The Toronto, Hamilton & Buffalo Railway Company; The Troy Union Railroad Company; Upper Coos Railroad Company (New Hampshire); Upper Coos Railroad Company (Vermont); Vancouver Traction Company; Vermont Valley Railroad; Wabash Railway Company; Wellsville, Coudersport & Pine Creek Railroad Company; West Shore Railroad Company (The New York Central Railroad Company, Lessee); York Harbor & Beach Railroad Company; The Zanesville & Western Railway Company; Benton & Fairfield Railroad Company; Moshassuck Valley Railroad Company; The Bedford Stone Railway Company; Bayfield Transfer Railway Company; Atlantic & East Coast Terminal Company; Butte, Anaconda & Pacific Railway Company; The Nevada Central Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Des Moines Union Railway

Company; Escanaba & Lake Superior Railroad Company; Bush Terminal Railroad Company; Genesee & Wyoming Railroad Company; Hoboken Manufacturers Railroad Company; Maryland & Pennsylvania Railroad Company; South Brooklyn Railway Company; American Pneumatic Service Company; Arizona Eastern Railroad Company; Alamogordo & Sacramento Mountain Railway Company; Burrs Ferry, Browndel & Chester Railway Company; Central Pacific Railway Company; Columbia & Palousa Railroad Company; Columbia River & Oregon Central Railroad Company; Columbia Southern Railway Company; Colusa & Hamilton Railroad Company; Dawson Railway Company; Des Chutes Railroad Company; El Paso & Rock Island Railway Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; Groveton, Lufkin & Northern Railway Company; Hanford & Summit Lake Railway Company; Hearne & Brazos Valley Railroad Company; Houston & Shreveport Railroad Company; The Houston East and West Texas Railway Company; Houston & Texas Central Railroad Company; Idaho Northern Railroad Company; Idaho Southern Railroad Company; Inter-California Railway Company; Lake Creek & Coeur d'Alene Railroad Company; Lake Charles & Northern Railroad Company; Lake Tahoe Railway & Transportation Company; The Leavenworth Depot & Railroad Company; Los Angeles & Pacific Company; Louisiana Western Railroad Company; Malheur Valley Railroad Company; Michigan East & West Railway Company and E. Ford, Receiver; Minneapolis & Rainy River Railway Company; Mojave & Bakersfield Railroad Company; Morenci Southern Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company;

New Mexico Central Railroad Company; New Mexico & Arizona Railroad Company; The Northern Pacific Terminal Company of Oregon; Northwestern Railroad Company; Northwestern Pacific Railroad Company; Ogden Union Railway & Depot Company; Oregon & Washington Railroad Company; Oregon & California Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Oregon, Washington & Idaho Railroad Company; Pacific Electric Railway Company; Payette Valley Railroad Company; Peninsular Railway Company (of California); Phoenix & Eastern Railway Company; Porterville & Northeastern Railway Company; Richmond Belt Railway; Sabine & Northern Railroad Company; The St. Joseph & Grand Island Railway Company; St. Joseph Terminal Railroad Company; Southern Pacific Company; San Diego & Arizona Railway Company; Southern Pacific Railroad Company; Southern Pacific Terminal Company; South Pacific Coast Railway Company; Spokane Union Depot Company; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Tucson & Nogales Railroad Company; Tucson, Cornelia & Gila Bend Railway Company; Umatilla Central Railway Company; Union Pacific Railroad Company; Visalia Electric Railroad Company; Walla Walla & Columbia River Railroad Company; Willamette Pacific Railway Company; Yakima Valley Transfer Company (Electric); Oahu Railway & Land Company; Cheswick & Harmar Railroad Company; Ferdinand Railroad Company; South Shore Railroad Company; Louisiana & Arkansas Railway Company; Kansas City Northwestern Railroad Company and J. M. Lee, Receiver; San Antonio & Aransas Pass Railway Company; Hannibal Connecting Railroad Company; Northampton & Bath Railroad Company; The Great Western Railway Company; Southwest Missouri Railway Company; Amsterdam, Chuctanunda

& Northern Railroad Company; Alton & Southern Railroad Company; Bauxite & Northern Railway Company; Massena Terminal Railroad Company; Manufacturers Junction Railway Company; Virginia & Truckee Railway; Hawaii Consolidated Railway, Limited; Kahului Railroad Company; Kauai Railway Company; The Kennebec Central Railroad Company; Pittsburgh & Allegheny River Railroad Company; Muncie & Western Railroad Company; Union Traction Company of Indiana; Union Street Railway Company; Albany Southern Railroad Company; Western New York & Pennsylvania Traction Company; The Hill City Railway Company; Fort Worth Belt Railway Company; Union Stock Yards Company of Omaha, Limited; Chicago, Ottawa & Peoria Railway Company; Peoples Traction Company; Cairo & St. Louis Railway Company; St. Louis Electric Bridge Company; St. Louis Electric Terminal Railway Company; Bloomington, Decatur & Champaign Railroad; Danville, Urbana & Champaign Railway Company; Illinois Central Traction Company; St. Louis, Springfield & Peoria Railroad; The Delaware, Lackawanna & Western Railroad Company; Iberia & Vermilion Railroad Company;

The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake & Ohio Northern Railway Company; Cincinnati, Interterminal Railroad Company; Covington, Cincinnati, Elevated Railroad & Transfer & Bridge Company; The Hocking Valley Railway Company; Piney River & Paint Creek Railroad Company: Amador Central Railroad Company; Arizona & Swansea Railroad Company; Ashland, Odanah & Marengo Railway Company; Asherton & Gulf Railway Company; Augusta Railroad Company; Bamberger Electric Railroad Company; Black Bayou Railroad Company; Brookings & Peach Orchard Railroad Company; Caddo & Choctaw Railroad Company; Cassville & Exeter Railway Company; Central California Traction

Company; Charles City Western Railway Company; Chicago, Harvard & Geneva Lake Railway Company; Christie & Eastern Railroad Company; Colfax Northern Railway Company; Dardanelle & Russellville Railroad Company; Dayton-Goose Creek Railway Company; The Dayton, Toledo & Chicago Railway Company; Doniphan, Kensett & Searcy Railway; El Dorado & Wesson Railway Company; E. V. Rideout Company; Fairchild & Northeastern Railway; Fordyce & Princeton Railroad Company; Fort Dodge, Des Moines, & Southern Railroad Company; Fort Smith, Subiaco & Rock Island Railroad Company; The Franklin & Abbeville Railway Company; Freeo Valley Railroad Company; Fredericksburg & Northern Railway Company; Fresno Interurban Railway Company; Gales Creek & Wilson River Railroad; Gulf & Northern Railway Company; The Garden City Western Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, Receiver; Hillsboro & Northeastern Railway Company; Interurban Railway Company; Jonesboro, Lake City & Eastern Railroad Company; Kinder & Northwestern Railway Company; The Kansas City Railways Company and F. W. Fleming, Receiver; The Kansas City Railways Company and F. M. Wilson, Receiver; The Kansas & Oklahoma Railway Company; L'Anguille River Railway Company; Leavenworth & Topeka Railroad Company; Little Rock, Maumelle & Western Railroad Company; Louisiana & Northwest Railroad Company and E. R. Bernstein, Receiver; Louisiana & Pacific Railway Company; The Lowville & Beaver River Railroad Company; Mascot & Western Railway Company; Memphis, Dallas & Gulf Railroad Company and M. Walsh, Receiver; Midland Continental Railroad; Minneapolis, Red Lake & Manitoba Railway Company; Milwaukee, Chicago & Michigan City Line; Minnesota Northwestern Electric Railway Company; Manchester & Oneida Railway Company; Mississippi & Western Railroad

Company; Merchants Transportation Company; Mississippi Eastern Railway Company; Missouri Southern Railroad Company; Monroe & Texas Railway Company; Montana Western Railway Company; Moscow, Camden & San Augustine Railway Company; Muscatine North & South Railway Company and M. Dailey, Receiver; Muscatine, Burlington & Southern Railroad Company; Oakdale & Gulf Railway Company; Oberlin, Hampton & Eastern Railroad Company; Ouachita & Northwestern Railroad Company; Pacific Coast Railway Company· Pacific Coast Railroad Company· Paragould-Memphis Railroad Company; Phoenix Railway Company of Arizona; The Prescott & Northwestern Railroad Company; Rockingham Railroad Company; Roscoe, Snyder & Pacific Railway Company; Salem, Winona & Southern Railroad Company; The Saline Northern Railroad Company and H. C. Brent, Receiver; The Salina Northern Railroad Company and P. W. Goebel, Receiver; Sand Springs Railway Company; San Antonio Southern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; Taber & Northern Railway Company; Texas City Terminal Company, The Texas Mexican Railway Company; Texas Midland Railroad; Texas Southeastern Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; Trinity Valley & Northern Railway Company; Washington Western Railway Company; Woodworth & Louisiana Central Railway Company; Union Traction Company of Kansas; Kansas, Oklahoma & Gulf Railway Company; Missouri, Oklahoma & Gulf Railway Company of Texas; Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Louisville, Henderson & St. Louis Railway Company; The Kansas City Connecting Railroad Company; Kansas City Stock Yards Company; Oklahoma National Stock Yards Company; St. Louis National Stock Yards; Aberdeen & Rock-

fish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; Alabama, Florida & Gulf Railroad Company; Alabama, Tennessee & Northern Railroad Corporation; Alabama & Northwestern Railroad Company; Alcolu Railroad Company; The Akron, Canton & Youngstown Railroad Company; Ashley, Drew & Northern Railway; Apalachian Railway Company; Arcata & Mad River Railroad Company; Arizona Southern Railroad Company; The Arizona & New Mexico Railway Company; Arkansas & Louisiana Missouri Railway Company; Athens Terminal Company; Atlanta & St. Andrews Bay Railway Company; Atlantic & Carolina Railroad Company; Atlantic Northern Railway Company; Atlantic, Waycross & Northern Railroad Company; Augusta Northern Railway; Bartlett Western Railway Company; Beaver, Meade & Englewood Railroad Company; Bennettsville & Cheraw Railroad Company; Bingham & Garfield Railway Company, Birmingham & Northwestern Railway Company; Birmingham & Southeastern Railway Company and W. M. Blount and John T. Cochrane, Receivers; Boyne City, Gaylord & Alpena Railroad Company; Butler County Railroad Company; Cache Valley Railroad Company; California Central Railroad Company; California Southern Railroad Company; California Western Railroad & Navigation Company; Cambria & Indiana Railroad Company; Cape Girardeau Northern Railway Company and J. W. Fristoe, Receiver; Campbells Creek Railroad Company; The Carolina & Yadkin River Railway Company; Craig Mountain Lumber Company Railway; Cedar Rapids & Iowa City Railway; Cement, Tolenas & Tidewater Railway; Charlotte Harbor & Northern Railway Company; Chesapeake Western Railroad Company; The Cimarron & Northwestern Railway Company; Cincinnati, Georgetown & Portsmouth Railroad; Cliffside Railroad Company; The Colorado-Kansas Railway Company; Coudersport & Port Allegany Rail-

road Company; Cowlitz, Chehalis & Cascade Railway; Cumberland & Manchester Railroad Company; Danville & Mount Morris Railroad Company and A. S. Murray, Receiver; De Kalb & Western Railroad Company; Dents Run Railroad Company; Denver & Intermountain Railway Company; DeQueen & Eastern Railroad Company; Durham & Southern Railway Company; East Erie Commercial Railroad; East Jersey Railroad & Terminal Company; East Tennessee & Western North Carolina Railroad Company; East Texas & Gulf Railway Company; Eastern Kentucky Railway Company; Edgemoor & Manetta Railway Company; Emmitsburg Railroad Company; Ettrick & Northern Railroad Company; Elkin & Allegheny Railroad Company; Federal Valley Railroad Company; Felicity & Bethel Railroad; Fellsmere Railroad; Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Fourche River Valley & Indian Territory Railway Company; Frankfort & Cincinnati Railway Company; Gainesville & Northwestern Railroad Company; Gainesville Midland Railway Company; Garyville Northern Railroad Company; Georgia Northern Railway Company; Gideon & North Island Railroad Company;

Glenmora & Western Railway Company; Grand Rapids Terminal Belt Railway Company; Grasse River Railroad Corporation; Great Southern Railroad Company; Greene County Railroad Company; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company; Hampton & Branchville Railroad Company; Hardwick & Woodbury Railroad Company; Holton Interurban Railway Company; Iowa Southern Utilities Company; Ironton Railroad Company; Kansas City, Kaw Valley & Western Railway Company; Kansas City, Leavenworth & Western Railway Company; Kellys Creek & Northwestern Railroad Company; Kentwood & Eastern Railway Company; Kentwood, Greensburg

& Southwestern Railroad Company; Kosciusko & Southeastern Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Jamestown, Westfield & Northwestern Railroad Company; Jefferson & Northwestern Railway Company; Joplin & Pittsburg Railway Company; La Crosse & Southeastern Railway Company; Lake Erie, Franklin & Clarion Railroad Company; The Lakeside & Marblehead Railroad Company; Laurel Fork Railway Company; Lawndale Railway & Industrial Company; The Lewiston, Nezperce & Eastern Railroad Company; Ligonier Valley Railroad Company; Linville River Railway Company; Little River Railroad Company of Tennessee; Live Oak, Perry & Gulf Railroad Company; McCloud River Railroad Company; Manitou & Pikes Peak Railroad Company; Marion & Eastern Railroad Company; Maxton, Alma & Southbound Railroad Company; Meridian & Memphis Railway Company; Middletown & Unionville Railroad Company; Minnesota, Dakota & Western Railway Company; Montana, Wyoming & Southern Railroad Company; Morehead & North Fork Railroad Company; The Motley County Railway Company; Mount Jewett, Kinzua & Riterville Railroad Company; Natchez, Columbia & Mobile Railroad Company; The Nevada Northern Railway Company; Nevada-California-Oregon Railway; Nevada County Narrow Guage Railroad Company; Newaukum Valley Railroad Company; New Castle & Ohio River Railway Company; New Jersey, Indiana & Illinois Railroad Company; The New Mexico Midland Railway Company; New Orleans & Lower Coast Railroad Company; Northeast Oklahoma Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New York Dock Railway; The New Park & Fawn Grove Railroad Company; Nezperce & Idaho Railroad Company; North Louisiana & Gulf Railroad Company; Norwood & St. Lawrence Railroad Company; Ocilla Southern Railroad Company and M. W. Garbutt, Receiver; Ocilla

Southern Railroad Company and J. A. J. Henderson, Receiver; Ocklawaha Valley Railroad Company and H. S. Cummings, Receiver; Okmulgee Northern Railway Company; Oneida & Western Railroad Company; Oregon Pacific & Eastern Railway Company; Pacific & Idaho Northern Railway Company; Wyoming Railway Company; Pearl River Valley Railroad Company; Pelham & Havana Railroad Company; The Pickens Railroad Company; Pine Bluff & Northern Railway Company; Pittsburgh & Susquehanna Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; Puget Sound & Cascade Railway Company; Rahway Valley Company, Lessee; Randolph & Cumberland Railway Company; Ray & Gila Valley Railroad Company; Red River & Gulf Railroad Company; Roanoke Railway Company; Roaring Fork Railroad Company; Rock Island Southern Railway Company and T. H. Beacon, Receiver; Rock Island Southern Railway Company and W. T. Abbott, Receiver; Rome & Northern Railroad Company and D. B. Carson, Receiver; Sacramento Northern Railroad; Salt Lake & Utah Railroad Company; St. Louis & Hannibal Railroad Company; San Benito & Rio Grande Valley Railway Company; San Joaquin & Eastern Railroad Company; San Luis Central Railroad Company; The San Luis Southern Railway Company; Saratoga & Encampment Railroad Company; Shearwood Railway Company; Sierra Railway Company of California; Skaneateles Railroad Company; South Manchester Railroad Company; Stanley, Merrill & Phillips Railway Company; The Sterling Mountain Railway Company; Springfield Electric Railway Company; Sugar Land Railway Company; Talbotton Railroad Company; Tampa & Jacksonville Railway Company; Tennessee & North Carolina Railway Company; Texas, Oklahoma & Eastern Railroad Company; Tooele Valley Railway Company; Townsville Railroad Company; Trinity Valley Southern Railroad Company; The Tuckerton Railroad

Company; Union & Glenn Springs Railroad Company; Ursina & North Fork Railway Company; Valdosta, Moultrie & Western Railway Company and R. P Murray, Receiver; Virginia & Carolina Southern Railroad Company; The Wabash, Chester & Western Railroad Company; Walla Walla Valley Railroad Company; Warren & Ouachita Valley Railway Company; Waterloo, Cedar Falls & Northern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Waterville Railway Company; Wautauga & Yadkin River Railroad Company and W. J. Grandin, Receiver; Waycross & Western Railroad Company; West Virginia Northern Railroad Company; White River Railroad Company; Wildwood & Delaware Bay Short Line Railroad Company; Wichita Falls & Southern Railway Company; The Winfield Railroad Company; Wyandotte Southern Railroad Company; Yosemite Valley Railroad Company; The Youngstown & Ohio River Railroad Company; Yreka Railroad Company; Electric Short Line Railway Company; Leesville, Slagle & Eastern Railway Company; Santa Maria Valley Railroad Company; Natchez, Uranian & Ruston Railway Company; The Atchison, Topeka & Santa Fe Railway Company; Baton Rouge, Hammond & Eastern Railroad Company; The Arkansas Western Railway Company; Blue Island Railroad Company; Beaumont Wharf & Terminal Company; Big Fork & International Falls Railway Company; Big Fork & Northern Railway Company; Chicago, Memphis & Gulf Railroad Company; The California, Arizona & Santa Fe Railway Company; Canton, Aberdeen & Nashville Railroad Company; Camas Prairie Railroad Company; Chicago, St. Louis & New Orleans Railroad Company; The Chicago & Alton Railroad Company; Chicago Junction Railway Company; the Chicago River & Indiana Railroad Company; Chicago, South Bend & Northern Indiana Railway Company; Concho, San Saba & Llano Valley Railway Company; Dubuque & Sioux City Railroad

Company; Eastern Railway Company of New Mexico; Dunleith & Dubuque Bridge Company; El Paso Union Passenger Depot Company; Gilmore & Pittsburgh Railway Company; The Grand Canyon Railway Company; Gulf & Interstate Railway Company of Texas; Gulf, Colorado & Santa Fe Railway Company; Helm & Northwestern Railroad Company; Houston Belt & Terminal Railway Company; Illinois Central Railroad Company; The Joliet & Chicago Railroad Company; Joplin Union Depot Company; The Kansas City Southern Railway Company; Los Angeles & Salt Lake Railroad Company; Kansas City, Shreveport & Gulf Terminal Company; Kansas City Terminal Railway Company; Louisiana & Missouri River Railroad Company; Mason City & Clear Lake Railroad Company; The Maywood & Sugar Creek Railway Company; Minnesota & International Railway Company; Missouri, Kansas & Texas Railway Company and C. E. Schaff, Receiver; The Missouri, Kansas & Texas Railway Company of Texas and C. E. Schaff, Receiver; New Jersey & Staten Island Ferry Company; Northern Pacific Railway Company; North Yakima & Valley Railway Company; The Ohio Electric Railway Company and B. J. Jones, Receiver; Oil Fields & Santa Fe Railway Company; Omaha Bridge & Terminal Railway Company; Pacific Northwest Traction Company; Panhandle & Santa Fe Railway Company; The Pecos & Northern Texas Railway Company; Pecos River Railroad Company; Phillipsburgh Transit Company; Port Townsend Southern Railroad Company; The Poteau Valley Railroad Company; Rio Grande, El Paso & Santa Fe Railroad Company; Rio Grande & El Paso Railroad Company; Rocky Mountain & Santa Fe Railway Company; Scottdale Connecting Railroad Company; The South Chicago Railroad Company; South Plains & Santa Fe Railway Company; The Sunflower & Eastern Railway Company; Southern Kansas Railway Company of Texas; Southern Michigan Railway Company; Sunset Rail-

way Company; St. Louis, Belleville & Southern Railway Company; Texas & Gulf Railway Company; Texarkana & Fort Smith Railway Company; Union Depot Company of Kansas City, Missouri; The Yazoo & Mississippi Valley Railroad Company; The Wichita Falls & Northwestern Railroad Company and C. E. Schaff, Receiver; Chicago, West Pullman & Southern Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; Deering Southwestern Railway; Illinois Northern Railway Company; The Owasco River Railway; Sidell & Olney Railroad Company;

The Springfield Terminal Railway Company; Wisconsin & Northern Railway Company; Sumter & Choctaw Railway Company; The Uintah Railway Company; Brownstone & Middletown Railroad Company; The Buffalo Creek & Gauley Railroad Company; Fore River Railroad Corporation; Patapsco & Black River Railroad Company; Philadelphia, Bethlehem & New England Railroad Company; Steelton & Highspire Railroad Company; Chestnut Ridge Railway Company; Bullfrog Goldfield Railroad Company; Death Valley Railroad Company; Depue & Northern Railroad Company; Mineral Point & Northern Railway Company; San Francisco & Oakland Terminal Railway Company; Tonopah & Tidewater Railroad Company; Akron Union Passenger Depot Company; Baltimore & New York Railroad Company; Baltimore & Ohio & Chicago Railroad Company (Illinois); Baltimore & Ohio & Chicago Railroad Company (Ohio & Indiana); Baltimore & Ohio Chicago Terminal Railroad Company; The Baltimore & Ohio Connecting Railroad Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Railroad Company in Pennsylvania; The Baltimore & Ohio Southwestern Railroad Company; The Baltimore & Philadelphia Railroad Company; The Baltimore Belt Railroad Company; Belington & Northern Railroad Company; Capitol Traction Company; Coal & Coke

Railway Company; The Confluence & Oakland Railroad Company; The Dayton & Union Railroad Company; Elwood Short Line Railroad Company; Fairmont, Morgantown & Pittsburgh Railroad Company; Hamilton Belt Railway Company; Hampshire Southern Railway Company; The Hardmans Branch Railroad Company; Indian Creek Valley Railway Company; Lehigh & New England Railroad Company; The Lancaster, Cecil & Southern Railroad Company; Little Kanawha Railroad Company; The Metropolitan Southern Railroad Company; Millers Creek Railroad Company; Morgantown & Kingwood Railroad Company; Ohio & Little Kanawha Railroad Company; Pittsburgh Junction Railroad Company; Pittsburgh Western Railroad Company; The Quemahoning Branch Railroad Company; The Sandy Valley & Elkhorn Railway Company; Sandyvi › & Waynesburg Railroad Company; The Schuylkill ʀiver & East Side Railroad Company; The Sharpsville Railroad Company and G. K. McIlvain, Receiver; Smithfield & Masontown Railroad Company; The Staten Island Railway Company; The Staten Island Rapid Transit Railway Company; The Tylersdale Connecting Railroad Company; The Valley Railroad Company of Virginia; Washington & Western Maryland Railroad Company; Washington County Railroad Company; Washington Run Railroad Company; The Washington Terminal Company; The Wheeling, Pittsburgh & Baltimore Railroad Company; The Winchester & Potomac Railroad Company; The Winchester & Strausburg Railroad Company; The Albana Railroad Bridge Company; Belle Fourche Valley Railway Company; Birmingham Belt Railroad Company; Chicago & North Western Railway Company; Chicago, Rock Island & El Paso Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Gulf Railway Company; Brownwood North & South Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway

Company; Choctaw, Oakland & Gulf Railroad Company; Depue, Ladd & Eastern Railway Company; Des Plaines Valley Railway Company; Fort Worth & Rio Grande Railway Company; James River Valley & Northwestern Railway Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City, Fort Scott & Memphis Railway Company; Keokuk & Des Moines Railway Company; Kansas City, Memphis & Birmingham Railroad Company; Macoupin County Railway Company; Manitowoc, Green Bay & Northwestern Railway Company; Milwaukee State Line Railway Company; Milwaukee, Sparta & Northwestern Railway Company; Minneapolis Eastern Railway Company; Missouri Valley & Blair Railway & Bridge Company; Paris & Great Northern Railroad Company; Peoria & Bureau Valley Railroad Company; Peoria Railway Terminal Company; Princeton & Western Railway Company; Quanah, Acme & Pacific Railway Company; Rock Island & Dardenelle Railway Company; Rock Island, Arkansas & Louisiana Railroad Company; Rock Island, Stuttgart & Southern Railway Company; St. Louis-San Francisco Railway Company; St. Louis, Kansas City & Colorado Railroad Company; The St. Louis, Peoria & Northeastern Railway Company; St. Paul & Kansas City Short Line Railroad Company; St. Louis, San Francisco & Texas Railway Company; St. Paul & Sioux City Railroad Company; St. Paul Eastern Grand Trunk Railway Company; Sioux City Bridge Company; Sligo & Eastern Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Winona & St. Peter Railroad; Wolf River Valley Railway Company; Wyoming & Northwestern Railway Company; The Interstate Railroad Company; Cairo & Kanawha Railway Company; Abilene & Southern Railway Company; Adirondack & St. Lawrence Railroad Company; The Alabama Northern Railway Company; Allegheny & South Side Railway Company; Aransas Harbor Terminal Railway Com-

pany; Atlanta, Birmingham & Atlantic Railway Company; Buffalo, Rochester & Pittsburgh Railway Company; Carrollton & Worthville Railroad Company; Central Valley Railroad Company; Chattahoochee Valley Railway Company; Chicago, Indianapolis & Louisville Railway Company; The City Electric Railway Company; The Colorado & Wyoming Railway Company; The Crystal River Railroad Company; Detroit & Lake St. Clair Railway; Detroit, Almont & Northern Railroad; Detroit, Jackson & Chicago Railway; Detroit, Monroe & Toledo Short Line Railway; Detroit, Mount Clemens & Marine City Railway; Detroit United Railway; Evansville & Southern Indiana Traction Company; The Grand Rapids, Grand Haven & Muskegon Railway Company; Hoosac Tunnel & Wilmington Railroad Company; Indianapolis & Cincinnati Traction Company; Flemingsburg & Northern Railroad Company; Indianapolis, Columbus & Southern Traction Company; Kentucky Midland Railroad Company; Lackawanna & Wyoming Valley Railroad Company; Laurel Railway Company; Manistee & Repton Railroad; The Midland Terminal Railway Company; Pascagoula Street Railway & Power Company; The Port Huron & St. Clair & Marine City Railway Company; Public Utilities Company; Rapid Railroad Company; The Rapid Railway Company; Rapid Railway System; Rural Valley Railroad; Scranton & Northeastern Railroad Company; Toledo & Indiana Traction Company; Wilkes-Barre Railroad Company; Winona Interurban Railway Company and C. J. Munton, Receiver; Zwolle & Eastern Railway Company; American Electric Railway Association; The Brimstone Railroad & Canal Company; New York, Ontario & Western Railway Company; The Rhode Island Company and Z. W. Bliss, Receiver; The Rhode Island Company and T. H. Green, Receiver; The Rhode Island Company and F. H. Swan, Receiver; Woodstock Railway Company; The Canadian Pacific Railway Company; Delray Connecting Railroad Com-

pany; The Dominion Atlantic Railway Company; The Duluth, South Shore & Atlantic Railway Company; Garden Bay Railway Company; Esquimalt & Nanaimo Railway Company; Houlton Branch Railroad Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Newport & Richford Railroad Company; Spokane International Railway Company; Tonopah & Goldfield Railroad Company; Bangor & Aroostook Railroad Company; Big Sandy & Cumberland Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Colorado & Southeastern Railroad Company; The Cuyahoga Valley Railway Company; Galesburg & Great Eastern Railroad Company; Galveston Wharf Company; Intermountain Railway Company; LaSalle & Bureau County Railroad Company; Marion & Rye Valley Railway Company; The Michigan & Chicago Railway Company; Michigan Railroad Company; Michigan United Railways Company; Mississippi River & Bonne Terre Railway; Mount Hope Mineral Railroad Company; Niagara Junction Railway Company; Northwestern Coal Railway Company; Smoky Mountain Railway Company; Sugar Pine Railway Company; Utah Railway Company; Virginia Southern Railroad Company; Wellington & Powellsville Railroad Company; American Railroad Company of Porto Rico; The Pittsburgh & West Virginia Railway Company; West Side Belt Railroad Company; Chicago Short Line Railway Company; The Kanawha Central Railway Company; The Paterson & Hudson River Railroad Company; The Paterson & Ramapo Railroad Company; Union Railroad Company; Arlington Railroad Company; Arnot & Pine Creek Railroad Company; Bath & Hammondsport Railroad Company; Bergen & Dundee Railroad Company; Bergen County Railroad Company; Central Vermont Railway Company; Champlain & St. Lawrence Railroad Company;

Chicago & Erie Railroad Company; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company; Conesus Lake Railroad Company; The Detroit & Huron Railway Company; Detroit, Grand Haven & Milwaukee Railway Company; Docks Connecting Railway Company; Elmira State Line Railroad Company; The Erie & Black Rock Railroad Company; Erie & Wyoming Valley Railroad Company; Erie Railroad Company; Erie Terminal Railroad Company; Eriton Railroad Company; The Grand Trunk Milwaukee Car Ferry Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Hackensack & Lodi Railroad Company; International Bridge Company; Jefferson Railroad Company; Lodi Branch Railroad Company; Long Dock Railroad Company; Macopin Railroad Company; Michigan Air Line Railway; Middletown & Crawford Railroad Company; New Jersey & New York Extension Railroad Company; New Jersey & New York Railroad Company; New York & Greenwood Lake Railway Company; New York, Lake Erie & Western Coal & Railroad Company; New York, Susquehanna & Western Railroad Company; Northern Railroad Company of New Jersey; Nypano Railroad Company; The Paterson, Newark & New York Railroad Company; Passaic & New York Railroad Company; Pontiac, Oxford & Northern Railroad Company; Rochester & Genesee Valley Railroad Company; The St. Clair Tunnel Company; Susquehanna Connecting Railroad Company; Tioga Railroad Company; Toledo, Saginaw & Muskegon Railway Company; United States & Canada Railroad Company; Wilkes-Barre & Eastern Railroad Company; Butte Electric Railway Company; St. John & Ophir Railroad Company; Verde Tunnel & Smelter Railroad Company; Altoona Northern Railroad Company; Virginia Blue Ridge Railway Company; Abilene & Northern Railway Company; Central New England Railway Company; Chicago, Burlington & Quincy Railroad

Company; The Colorado & Southern Railway Company; The Colorado Springs & Cripple Creek District Railway Company; Davenport, Rock Island & Northwestern Railway Company; The Denver Union Terminal Railway Company; Duluth & Superior Bridge Company; Duluth Terminal Railway Company; Farmers Grain & Shipping Company; The Fort Worth & Denver City Railway Company; The Great Northern Railway Company; Inland Empire Railroad Company; Lake Superior Terminal & Transfer Company; Minneapolis Western Railway Company; New York & Stamford Railway Company; The New York, New Haven & Hartford Railroad Company; New York, Westchester & Boston Railway Company; Oregon Electric Railway Company; Quincy, Omaha & Kansas City Railroad Company; Spokane & Eastern Railway & Power Company; Spokane, Portland & Seattle Railway Company; Stamford & Northwestern Railway Company; The Trinity & Brazos Valley Railway Company and J. A. Hulen, Receiver; United Railway Company; Watertown & Sioux Falls Railway Company; Wichita Falls & Oklahoma Railway Company; Wichita Valley Railroad Company; The Wichita Valley Railway Company; Winona Bridge Railway Company; The Colorado, Wyoming & Eastern Railway Company; New Orleans Great Northern Railroad Company; Mississippi Central Railroad Company; Gulf & Ship Island Railroad Company; The Maryland Electric Railways Company; The Akron & Barberton Belt Railroad Company; The Atchison & Eastern Bridge Company; Baltimore, Chesapeake & Atlantic Railway Company; Calumet Western Railway Company; Cherry Tree & Dixonville Railroad Company; Chicago, Indiana & Eastern Railway Company; Cincinnati, Richmond & Fort Wayne Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cleveland & Pittsburgh Railroad Company; The Connecting Terminal Railroad Company; The Cumberland Valley Railroad Company; Dayton,

Lebanon & Cincinnati Railroad & Terminal Company; Englewood Connecting Railway Company; Erie & Pittsburgh Railroad Company; Grand Rapids & Indiana Railway Company; The Indianapolis Union Railway Company; The Little Miami Railroad Company; The Long Island Railroad Company; The Lorrain, Ashland & Southern Railroad Company; Manufacturers Railway Company; Maryland, Delaware & Virginia Railway Company; Massillon & Cleveland Railroad Company; The Monongahela Railway Company; New York, Philadelphia & Norfolk Railroad Company; Norfolk & Portsmouth Belt Line Railroad Company; The Ohio Connecting Railway Company; The Ohio River & Western Railway Company; Pennsylvania Company; The Pennsylvania Railroad Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; Pittsburgh, Fort Wayne & Chicago Railway Company; The Pittsburgh, Ohio Valley & Cincinnati Railroad Company; Pittsburgh, Wheeling & Kentucky Railroad Company; The Pittsburgh, Youngstown & Ashtabula Railway Company; Rosslyn Connecting Railroad Company; South Chicago & Southern Railroad Company; Terre Haute & Peoria Railroad Company; Toledo, Columbus & Ohio River Railroad Company; Toledo, Peoria & Western Railway Company and E. N. Armstrong, Receiver; Union Railroad Company of Baltimore; Waynesburg & Washington Railroad Company; Western New York & Pennsylvania Railway Company (New Castle Branch); West Jersey & Seashore Railroad Company; Wheeling Terminal Railway Company; Youngstown & Ravenna Railroad Company; Chesapeake Beach Railway Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company; Lykens Valley Railroad & Coal Company; Bay Terminal Railroad Company; Beaver Valley Railroad Company; Delaware River & Union Railroad Company; Alexandria & Western Railway Company;

Cornwall Railroad Company; Franklin & Pittsylvania Railroad Company; Gulf, Florida & Alabama Railroad Company and J. T. Steele, Receiver; Lufkin, Hemphill & Gulf Railroad Company; Montour Railroad Company; Pecos Valley Southern Railway Company; Peoria & Pekin Union Railway Company; Potato Creek Railroad Company; St. Louis, El Reno & Western Railway Company and A. L. Mills, Receiver; The Savannah & Southern Railway Company; Silverton Northern Railroad Company; Tuscarora Valley Railroad Company; Silverton Railway Company; Statenville Railway Company; Ahnapee & Western Railway Company; Arcadia & Betsey River Railway Company; Bellefonte Central Railroad Company; Bevier & Southern Railroad Company; Bloomsburg & Sullivan Railroad Company; Central West Virginia & Southern Railroad Company; Clarendon & Pittsford Railroad Company; Copper Range Railroad Company; Delaware & Northern Railroad Company; Duluth & Northwestern Railroad Company; Georgia Southwestern & Gulf Railroad Company; Grafton & Upton Railroad Company; Green Bay & Western Railroad Company; Illinois Terminal Railroad Company; Kishocoquillas Valley Railroad Company; Kewaunee, Green Bay & Western Railroad Company; Lake Champlain & Moriah Railroad Company; Madison Southern Railway Company; Nelson & Albemarle Railway Company; Ontonagon Railroad Company; The Pittsburgh, Shawmut & Northern Railroad Company and H. S. Hastings, Receiver; Tama & Toledo Railroad Company; Texas Short Line Railway Company; Unadilla Valley Railway Company; Union Transportation Company; Valley Railroad Company of West Line, Pa.; Waupaca-Green Bay Railroad Company; Williamsport & North Branch Railway Company and E. Bailey, Receiver; Bay Point & Clayton Railroad Company; Clarion River Railway Company; Dry Fork Railroad Company; Kersey Railroad Company; Neame, Carson & Southern Railroad Company;

Ohio & Kentucky Railway Company; Stewartstown Railroad Company; Enterprise Railway Company; Escambia Railway; Hickory Valley Railroad Company; Hiwanee & Tombigbee Railroad Company; Kingston Railroad Company; Louisiana & Pine Bluff Railway Company; Malvern & Freeo Valley Railway Company; Mansfield Railway & Transportation Company; The Nacogdoches & Southeastern Railroad Company; Shubuta & Southwestern Railroad Company; Tifton Terminal Company; Tyronza & St. Francis River Railway Company; Wisconsin & Northwestern Railway;

Atlantic City Railroad Company; Catasauqua & Fogelsville Railroad Company; The Central Railroad Company of New Jersey; Chester & Delaware River Railroad Company; The Dover & Rockaway Railroad Company; The Gettysburg & Harrisburg Railway Company; Middletown & Hummelstown Railroad Company; The New York & Long Branch Railroad Company; The Northeast Pennsylvania Railroad Company; The Ogden Mine Railroad Company; Perkiomen Railroad Company; The Philadelphia & Chester Valley Railroad Company; Philadelphia & Reading Railway Company; Philadelphia Belt Line Railroad Company; The Philadelphia, Newtown & New York Railroad Company; Pickering Valley Railroad Company; The Port Reading Railroad Company; Raritan River Railroad Company; Reading & Columbia Railroad Company; The Rupert & Bloomsburg Railroad Company; Stony Creek Railroad Company; The Tamaqua, Hazelton & Northern Railroad Company; The Williams Valley Railroad Company; Intercolonial Railway of Canada; Midland Valley Railroad Company; Canadian Northern Railway Company; New London Northern Railroad Company; Duluth, Winnipeg & Pacific Railway Company; Halifax Southwestern Railway Company; Sault Ste. Marie Bridge Company; West River Railroad Company; Alaska Northern Railway Company; Tanana Valley

Railroad Company; The Due West Railway Company; Washington Virginia Railway Company; Indiana Northern Railway Company; Aliquippa & Southern Railroad Company; The Monongahela Connecting Railroad Company; Kentucky & Tennessee Railway; Lancaster & Chester Railway Company; Alabama & Mississippi Railroad Company; Ware Shoals Railroad; Georgia & Florida Railway and J. F. Lewis, Receiver; Georgia & Florida Railway and L. M. Williams, Receiver; Georgia & Florida Railway and W. R. Sullivan, Receiver; Tennessee Railroad Company and J. N. Baker and H. G. Fowler, Receivers; Massachusetts Northeastern Street Railway Company; Bonlee & Western Railway Company; Atlantic & Western Railroad Company; Copper River & Northwestern Railway Company; Magma Arizona Railroad Company; New York & Pennsylvania Railway Company; Bangor Railway & Electric Company; Cumberland County Power & Light Company; Chicago Great Western Railroad Company; Cooperstown & Charlotte Valley Railroad Company; The Delaware & Hudson Company; Greenwich & Johnsonville Railway Company; Hudson Valley Railway Company; The Leavenworth Terminal Railway and Bridge Company; The Lorain & West Virginia Railway Company; Napierville Junction Railway Company; The Quebec, Montreal & Southern Railroad Company; The Wheeling & Lake Erie Railway Company; Terre Haute, Indianapolis & Eastern Traction Company; Portland Railway, Light & Power Company; Ohio Valley Electric Railway Company; Alabama Great Southern Railroad Company; Asheville & Craggy Mountain Railway Company; Asheville Southern Railway Company; Atlantic & Yadkin Railway Company; Atlanta Terminal Company; Belt Railway Company of Chattanooga; Birmingham Terminal Company; Blue Ridge Railway Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Chat-

tanooga Station Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Columbia Union Station Company; Columbus & Greenville Railroad Company; The Cumberland Railroad Company and J. F. Campbell, Receiver; Danville & Western Railway Company; Delta Southern Railway Company; Durham Union Station Company; Elberton Southern Railway Company; Ensley Southern Railway Company; Georgia Midland Railway Company; Georgia Southern & Florida Railway Company; Gulf Terminal Company; Harriman & Northeastern Railroad Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company and R. B. Pegram, Receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Kentucky & Indiana Terminal Railroad Company; Macon & Birmingham Railway Company; Meridian Terminal Company; Mobile & Birmingham Railroad Company; Mobile & Ohio Railroad Company; Mobile Docks Company; New Orleans & Northeastern Railroad Company; The New Orleans Terminal Company; North Carolina Midland Railroad Company; North Charleston Terminal Company; North & South Carolina Railroad Company; Northern Alabama Railway Company; Richmond & Mecklenburg Railroad Company; St. Johns River Terminal Company; Sievern & Knoxville Railroad Company; Southern Railway Company; Southern Railway (Carolina Division); Southern Railway Company of Indiana; Southern Railway Company, in Kentucky; State University Railroad Company; Tallulah Falls Railway Company; Tennessee & Carolina Southern Railway Company; Woodstock & Blocton Railway Company; Yadkin Railroad Company; Alabama & Vicksburg Railway Company; Norfolk & Western Railway Company; Tennessee Central Railroad Company and W. K. McAlister, Receiver; Tennessee Central Railroad Company and H. W. Stanley, Receiver; Tug River &

Kentucky Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Williamson & Pond Creek Railroad Company; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Augusta Belt Railway Company; Augusta Union Station Company; Augusta & Summerville Railroad Company; Belt Line Railway of Alabama; Carolina Railroad Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Central of Georgia Railway Company; Central Railroad Company of South Carolina; Charleston Terminal Company; Charleston Union Station Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chesterfield & Lancaster Railroad Company; Columbia, Newberry & Laurens Railroad Company; East Carolina Railway; East & West Coast Railway; Elberton & Eastern Railroad Company; Florida Central & Gulf Railway; Florida East Coast Railway Company; Florida East Coast Car Ferry Company; Georgia Railroad; Georgia, Florida & Alabama Railway Company; Goldsboro Union Station Company; Jacksonville Terminal Company; The Kinston Carolina Railroad Company; Lexington Terminal Railroad Company; Louisville & Wadley Railroad Company; Macon, Dublin & Savannah Railroad Company; Marion & Southern Railroad Company; Milledgeville Railway Company; The Monroe Railroad Company; Norfolk Southern Railroad Company; Northwestern Railroad Company of South Carolina; Raleigh & Charleston Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Savannah River Terminal Company; Savannah Union Station Company; Seaboard Air Line Railway Company; South Carolina Pacific Railroad Company; Sylvania Central Railroad Company; Tampa & Gulf Coast Railroad Company; Union Point & White Plains Railroad Company; The Virginian Railway Company; Wadley Southern

Railway Company; Washington & Lincolnton Railroad Company; Washington & Vandemere Railroad Company; Western Railway of Alabama; Wilmington Railway Bridge Company; Winston Salem Southbound Railway Company; Wrightsville & Tennille Railroad Company; Detroit & Toledo Shore Line Railroad Company; Toledo, St. Louis & Western Railroad Company and W. L. Ross, Receiver; The Ulster & Delaware Railroad Company; Transylvania Railroad Company; Washington & Old Dominion Railway; Panama Railroad Company; Dover & Southbound Railroad Company; Preston Railroad Company; Salt Lake, Garfield & Western Railway Company; The Pullman Company; Pullman Railroad Company; Cumberland & Pennsylvania Railroad Company;

Aberdeen & Ashboro Railway Company; Acme Tap Railway Company; Adena Railroad Company; Addison Railroad Company; Addyston & Ohio River Railroad Company; Agatite Short Line Railway; A. H. Bull Steamship Company; Alabama & Tombigbee Railroad; Alabama City, Gadsden & Attala Railway Company; Alabama Consolidated Coal & Iron Company's Railroad; Alabama Navigation Company; Alabama Northwestern Railway Company; Alabama Southern Railroad Company; Alabama Eastern Railroad Company; Albany & Susquehanna Railroad Company; Albany & Vermont Railroad Company; Albany Day Line; Albany Street Railroad Company; Albertson Great Eastern Railroad Company; Albuquerque Eastern Railway Company; Alexander & Eastern Railway Company; Algiers Railway & Lighting Company; Allegheny & Western Connecting Railway Company; Allegheny & Western Railway Company; Allegheny Railroad Company; Allegheny Terminal Company; Allentown Railroad Company; Allentown Terminal Railroad Company; Alton Terminal Railway Company; Altoona, Juniata & Northern Railway Company; Altoona & Beech Creek Railroad Company; Amador Railway Com-

pany; Ames & College Railway Company (Electrical); Anderson & Bella Vista Railroad; Anderson & Salina River Railroad Company; Annapolis & Chesapeake Railroad Company; The Anning J. Smith Transportation Line and J. C. J. Van Noyes, Receiver; Apalachia & Cleveland Railway; Arbacoochee Timber & Railway Company; Argentine & Grays Peak Railway; Argentine Central Railway; Arkansas & Gulf Railroad Company; Arkansas & Eastern Railroad Company; Arkansas, Oklahoma & Western Railroad; Arkansas, Red River & Paris Railway Company; Arkansas Valley Railroad Company; Aroostook River Railroad; Andalusia, Florida & Gulf Railway; Androscoggin & Kennebec Railway Company; Atlantic City & Shore Railway Company and A. J. Puritan, Receiver; Asheville Northern Railroad Company; Athens, Amesville & Chauncey Railway Company; Athens Belt Line Railroad Company; Atchison Union & Depot Railroad Company; Atlanta Belt Line Company; Atlanta & Charlotte Air Line Railway Company; Atlantic & Carolina Railroad; Atlantic & St. Lawrence Railroad Company; Atlantic Coast Lumber Corporation's Railroad; Atlantic Northern & Southern Railway Company; Atlantic Southern Railroad Company; Atlantic, Quebec & Western Railway Company; Atlantic Shore Railway and F. O. Conant & Constant Southworth, Receivers; Attleboro Branch Railroad Company; Austin Dam & Suburban Railroad Company; Augusta & Northwestern Railway Company; Augusta & Savannah Railroad Company; Augusta & Savannah Steamboat Company and W. A. Smith, Receiver; Augusta Savannah Navigation Company; Aurora, DeKalb & Rockford Electric Traction Company; Aurora, Elgin & Chicago Railroad Company and J. K. Choote, Receiver; Avon, Genessee & Mount Morris Railroad Company; Ayer & Lord Barge Company; Bachman Valley Railroad Company; Bakersfield & Ventura Railroad Company; Baldwin County Transportation Company; Ballard &

Thompson Railroad; Bare Rock Railroad Company; Barnegat Railroad Company; Barre & Chelsea Railroad; Barre Branch Railroad Company; Barre Railroad Company; Bastrop & Lake Providence Railway; Battle Creek & Sturgis Railway Company; Bay City & Battle Creek Railway Company; Bay de Noquet Railroad Company; Bayfield Harbor & Great Western Railroad Company; Bayfield Superior & Minneapolis Railway Company; Bayonne & New Haven Transportation Company; Bay Shore Connecting Railroad Company; Bay Shore Railway; Bayside Logging Railroad; Bay State Railroad; Beach & Mill Line; Beaverton & Willsburg Railroad Company; Bearden & Ouachita River Railroad Company; Beaufort County Lumber Company's Railroad; Beaver Connecting Railroad Company; Beaver Creek Railroad Company; Beaver Meadow, Tresckow & New Boston Railroad; Beaver & Ellwood Railroad Company; Bedford & Hollidaysburg Railroad Company; Bedford & Bridgeport Railway Company; Beach Creek Extension Railroad Company; Bedford & Wallner Railroad Company; Bee Tree Railroad Company; Beirne & Clear Lake Railroad Company; Belcher Mountain Railway Company; Bellevue Valley Railroad Company; Belt Railroad & Stock Yard Company; Belt Railroad of San Francisco; Belvidere Delaware Railroad Company; Bennett & Eastern Railroad; Benton Harbor Terminal Railway Company; Bering, Kiam & Southern Railroad Company; Berkeley Springs & Potomac Railroad Company; Berkshire Railroad Company; Berlin Railroad Company; Bernice & Northwestern Railway Company; Bessemer & Southwestern Railroad; Bethel Granite Railway Company; Birmingham & Atlantic Railroad Company and G. R. Williams, Receiver; Big Creek & Trinity Valley Railway Company; Big Creek Lumber Company's Railroad; Big Falls Railway Company; Big Stone Gap & Powells Valley Railroad Company; Billings & Central Montana

Railway; Birmingham & Gulf Railway & Navigation Company; Bluestone Traction Company; Black & White River Transportation Company; Black Lick & Yellow Creek Railroad Company; Black Mountain Railway; Bladen & Columbus Railroad Company; Blakeley Southern Railroad Company and J. B. Bevings, Receiver; Blaney & Southern Railroad Company; Bloomington Southern Railroad Company; Bluefields Fruit & Steamship Company; Blue Funnel Line; Blue Hill Line; Blue Ridge & Atlantic Railway Company; Bluffton, Geneva & Salina Traction Company; Bogue Chitto, Liberty & Southwestern Railroad; Boise City Railway & Terminal Company; Bamberg, Ehrhardt & Walterboro Railway Company; Bonita & Fort Myers Connecting Line; Book Cliff Railroad Company; Border Line Transportation Company; Boston & Gloucester Steamship Company; Boston & Little River Railway Company; Boston & Lowell Railroad Corporation; Boston & Norfolk Line; Boston & Portland Line; Boston & Providence Railroad Corporation; Boston & Yarmouth Steamship Company; Boston, Norfolk, Newport News & Baltimore Line; Boston, Revere Beach & Lynn Railroad Company; Boston Terminal Company; Bowden Railway; Bowie, Lafourche & Northwestern Railway Company; Bowling Green Railroad Company; Bradford Railway Company; Branchville & Bowman Railroad Company; Brandon & West Rutland Railroad Company; Brandon, Devils Lake & Southern Railway Company; Branden, Saskatchewan & Hudson Bay Railway Company; Brice & Smart Railroad; Bridgeport & Windmire Railway Company; Bridgeport Line; Bristol Railroad Company and R. Denio, Receiver; British Columbia Electric Railway, Limited; British Yukon Navigation Company; British Yukon Railway; Brockton & Plymouth Street Railway Company; Brook Railroad Company; Brookfield Railroad Company; Brookings Lumber & Box Company's Railroad; Brooklyn East-

ern District Terminal; Brooksville Railroad; Brunswick & Chillicothe Railroad Company; Brunswick & Florida Steamship Company; Brunswick Steamboat Lines; Blue Island Railway Company; Brunswick & Florida Steamboat Company; Buchanan Lumber Company's Railroad; Buchanan & St. Joseph River Railroad; Bucksport & Elk River Railroad Company; Berkshire Street Railway Company; Buffalo & Susquehanna Coal & Coke Company's Railroad; Buffalo, Bradford & Pittsburgh Railroad Company; Buffalo Creek Transfer Railroad Company; Buffalo Erie Basin Railroad Company; Buffalo, Thousand Island & Portland Railroad Company; Burlington & Southeastern Railroad Company; Burton Lumber Company's Railroad; Burton Steamship Company; Bush Line; Butte County Railroad Company; Butters Lumber Company's Railroad; Canadian National Railways; California Northeastern Railway Company; Canada Interlake Line, Limited; Canadian Lake Line; Cadiz Railroad in Kentucky; Cairo, Memphis & Southern Railroad & Transportation Company; Cairo Railroad; Caldwell & Northern Railroad Company; Caldwell Interurban Railway Company; Caldwell Norton Lumber Company's Railroad; California Navigation & Improvement Company; California Northwestern Railway; California Southern Railroad Company; Caloosahatchie River Steamboat Line; Calumet Fuel Company's Railroad; Calumet & Southeastern Railway Company; Cambria & Clearfield Railway Company; Camden & Burlington County Railroad Company; Camino, Placersville & Lake Placid Railway; Campbell Hall Connecting Railway Company; Campbell Lumber Company's Railroad; Canada & Gulf Terminal Railroad; Canada, Atlantic & Plant Steamship Company; Canada Southern Bridge Company; Canadian Australian Royal Mail Steamship Line; Canadian Pacific Ocean Service, Limited; Cannelton Railroad Company; Canton & Wooster Railroad Company; Canon City & Cripple Creek

Railroad Company; Cape Breton Railway: Caraquet Railway; Carribean & Southern Steamship Company; Carman & Jefferson Railroad; Carolina Valley Railway Company; Carter-Kelley Lumber Company's Logging Railroad; Carthage & Adirondack Railway Company; Carthage & Copenhagen Railroad Company; Carthage Watertown & Sacket's Harbor Railroad Company; Casco Bay & Harpswell Lines; Cashie & Chowan Railroad & Lumber Company; Casper, South Fork & Eastern Railroad; Castle Valley Railroad Company; Catahoula Central Railway Company; Catawissa Railroad Company; Catonsville Shore Line Railroad Company; Catskill Mountain Railroad Corporation; Casenovia Southern Railroad Company; Catskill Evening Line; Cayuga & Susquehanna Railroad Company; Central Electric Traffic Association; Central California Railway Company; Central Arkansas & Eastern Railroad Company; Central American Railroads; Central Arizona Railway Company; Central Dock & Terminal Railway Company; Central Ontario Railway Company; Central Pennsylvania Lumber Company's Railroad; Central Railroad Company of Louisiana; Central Railroad Company of Oregon; Central Railroad Company of Pennsylvania; Central Transfer Railway & Storage Company; Central Trunk Railroad Company; Chicago, Aurora & DeKalb Railroad Company and H. Gunsel, Receiver; Chico & Northern Railroad Company; Chagrin Falls & Lake Erie Railroad Company; Champion Lumber Company's Railroad; Changninola Railway; Charlottesville & Rapidam Railroad Company; Chateaugay & Lake Placid Railway Company; Chatham Railroad Company; Chattahoochee & Gulf Railroad Company; Chattanooga Packet Company (Tennessee), Chattanooga Railway & Light Company; Chattanooga Terminal Railway Company; Chautauqua Lake Navigation Company; Chautauqua Steamboat Company; Chautauqua Traction Company; Chehalis County

Logging & Timber Company's Railroad; Chelan Transportation & Smelting Company's Railroad; Cherry River Boom & Lumber Company's Railroad; Cherry Run & Potomac Valley Railroad Company; Cherry Valley, Sharon & Albany Railroad Company; Chesapeake & Curtiss Bay Railroad; Chesapeake & Ohio Railway Company of Kentucky; Chippewa Valley & Northern Railway Company; Canton, Aberdeen & Nashville Railroad Company of Alabama; Carthage & Pinehurst Railroad Company; Chester Creek Railroad Company; Chester Railroad Company; Chestnut Hill Railroad Company; Chicago, Bloomington & Decatur Railway Company; Chicago, Ziegler & Gulf Railroad Company;

Chicago & Duluth Transportation Company and Dennis Sullivan, Receiver; Chicago & Illinois Southern Railroad Company; Chicago & Kalamazoo Terminal Railroad Company; Chicago & Lake Superior Railway Company; Chicago & South Bend Railroad Company; Chicago, Anamosa & Northern Railway Company and G. N. Farmer, Receiver; Chicago, Duluth & Georgian Bay Transit Company; Chicago Heights Terminal Transfer Railroad Company; Chicago, Indianapolis & St. Louis Short Line Railway Company; Chicago Lighterage Company; Chicago Warehouse & Terminal Company; Chicago & Wabash Railway Company; Chihuahua Mineral Railway; Chippewa River & Northern Railway Company; Choctaw Lumber & Veneer Company's Railroad; Choctaw, New Castle & Western Railroad Company; Chowahilla Pacific Railway; Cincinnati & Birmingham Air Line Railway; Cincinnati & Dayton Railway Company; Cincinnati & Southern Ohio River Railroad Company; Cincinnati & Westwood Railroad Company; Cincinnati, Bluffton & Chicago Railroad Company; Cincinnati, Findlay & Fort Wayne Railway Company; Cincinnati, Lawrenceburg & Aurora Electric Street Railroad Company and C. E. Hoover, Receiver; Cincinnati, Saginaw & Mack-

inaw Railroad Company; Cincinnati Southern Railway; Cinelare Centrai Factory Railroad; City & Suburban Railway of Washington; Clark & Pike County Railroad Company; Clark & Rocheport Railway; Clarksburg Northern Railroad; Clear Creek Lumber Company's Railroad; Clearfield & Mohoning Railway Company; Clear Lake Lumber Company's Railroad; Clearwater Valley Railroad Company; Celment Lumber Company's Railroad; Cleveland & Toledo Line; Cleveland & Mahoning Valley Railway Company; Clyde St. Johns River Line; Coal Creek Lumber Company's Railroad Company; Coast Line Railway Company; Collins & Ludowici Railroad and J. V. Kelly and M. S. Lewis, Receivers; Coal River Railway; Cobb & Mitchell Logging Railway; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & Spokane Railway Company; Colebrookdale Railroad Company; Colfax Consolidated Coal Company's Railroad; Colorado Eastern Railroad Company; Colorado, Kansas & Oklahoma Railroad Company; Colorado Railroad Company; Columbia & Port Deposit Railway Company; Columbia & Red Mountain Railway; Columbia & Southern Railway Company and H. A. Middleton, Receiver; Columbia & Xenia Railroad Company; Columbus, Findlay & Northern Railroad Company; Columbus, Hope & Greensburg Railroad Company; Columbus, Marion & Bucyrus Railroad Company and G. Whysale and F. E. Guther, Receivers; Columbus Railroad Company; Colusa & Lake Railroad Company; Colorado Midland Railroad Company; Concord & Claremont New Hampshire Railroad Company; Concord & Montreal Railroad; Concord & Portsmouth Railroad; Conemaugh & Black Lick Railway Company; Congress Consolidated Mines Company, Ltd.; Connecticut & Passumpsic Rivers Railroad Company; Connecticut River Railroad Company; Connecting Railway Company; Conway Electric Street Railway Company; Cooperstown & Susquehanna Valley Railroad Company; Copper Belt

Railroad Company; Cornie Valley Railroad; Coronada Railroad Company of California; Coronada Railroad of Arizona; Coshocton Railroad Company; Cotton Belt Lumber Company; Cotton State Lumber Company's Railroad; Council City & Solomon River Railroad Company; Craig & Jackson Line; Cranberry Lake Railroad Company; Cranberry Transportation Company; Crescent City & Smith River Railroad; Creston, Winterset & Des Moines Railroad and C. E. Wilson, Receiver; Crosett Railway Company; Crosett, Monticello & Northern Railway Company; Crowell & Spencer Lumber Company's Railroad; Crow's Nest Southern Railway Company; Culbreth Logging Company's Railroad; Cumberland Railway Company; Cumberland Valley & Martinsburg Railroad Company; Cummer Lumber Company's Railroad; Curtiss Lumber Company's Railroad; Curtiss, Attalia Lumber Company's Railroad; Currituck Line; Cybur, Gulf & Northwestern Railway Company; Crystal River & San Juan Railroad Company; Dahoga & Highland Railroad Company; Dallas, Portland & Astoria Navigation Company; Dallas Terminal Railway & Union Depot Company; Dantzeler Lumber Company's Railroad; Danville & Eastern Railway Company; Danville & Edwardsville Terminal Railway Company; Danville & Northern Railway Company; Danville & Southeastern Railway Company; Daniels Roanoke River Line; Danville & Indiana Harbor Railroad Company; Davis Brothers Logging Railroad, L. A.; Davis Lumber Company's Railroad, J. R.; Dayton & Michigan Railroad Company; Dayton & Western Railroad Company; Dayton Coal & Iron Company's Railroad; Dayton, Springfield & Xenia Southern Railway Company; Dearborn Tram & Transfer Company; Decatur Belt Railway Company; Deerfield River Railroad Company; De Funiak Springs & Northern Railroad Company; Denver, Boulder & Western Railroad Company; Delhi, Baskin & Southwestern Railway Company; Delaware & Bound Brook Railroad Company;

Delaware River Railroad & Bridge Company; Delaware Railroad Company; Delaware Valley Railway Company; De Kalb & Western Railroad Company; Del Oro Transportation Company; W. Denny & Company's Logging Railroad; Denver & Gulf Railroad Company; De Ron Lumber Company's Railroad; Deserento Navigation Company; Des Moines & Fort Dodge Railroad Company; Des Moines, Iowa Falls & Northern Railway Company; Des Moines Western Railway Company; De Soto Land & Lumber Company's Railroad; Detroit & Bay City Railroad Company; Detroit & Charlevoix Railroad Company; Detroit, Delray & Dearborn Railroad Company; Detroit, Hillsdale & Southwestern Railroad Company; Detroit Manufacturers Railroad; Detroit Terminal Railway & Transportation Company; Detroit, Toledo & Milwaukee Railroad Company; Detroit, Toledo Railroad Company; Detroit Union Railroad, Depot & Station Company; Devils Lake & Chautauqua Transfer Company; Diamond & Calder Railroad Company; Dixie Route; Dolgeville & Salisbury Railway Company; Dominion Transportation Company; Donaldson Railroad; Dorcheat Valley Railroad Company; Dougha Land Company's Railroad; Douglas Land Company's Railroad; Douglas Transportation Line; Dowling Lumber Company's Railroad; Drummond & Southwestern Railway Company; Dublin & Southwestern Railroad Company; Duluth & Northern Railroad Company; Duluth Belt Line Railroad Company; Duluth, Fergus Falls & Southern Railway Company; Duluth, St. Cloud, Clences & Mankato Railway Company; Duluth Street Railway Company; Dunbar & Wausaukee Railway; Dunnellon Phosphate Company Railroad; Durham & Charlotte Railroad; Durham Railroad Company; Durham Transportation Company; Dyer Transportation Line; Eagle Lumber Company's Railroad; Eagle Sale Works Railroad Company; Eagles Mere Railroad Company and E. Bailey, Receiver; East Berline Railway; East Chicago

Belt Railroad Company; East Coast Navigation Company; East Georgia Railway Company; East Mahoney Railroad Company; East Pennsylvania Railroad Company; East River Terminal Railroad; East Short Line; East Trenton Railroad Company; Eastern Massachusetts Street Railway Company; Eastern Railroad Company; Eastern Wisconsin Electric Company; Eastern & Western Lumber Company's Railroad;

Eastern Texas Railroad Company; Edgewater Terminal Railroad Company; Edgewater Connecting Railway Company; Edwardsville Belt Railroad Company; Elberton Air Line Railroad Company; El Dorado Lumber Company's Railroad; El Dorado, Marion & Southwestern Railway Company; Elk & Highland Railroad Company; Elkhart & Western Railroad Company; Elkton & Guthrie Railway Company; Elkton & Middleton Railroad Company of Cecil County; Elk Valley Coal & Iron Company's Railroad; Ellaville, Westlake & Jennings Railway; Ellenville & Kingston Railroad Company; Ellisville Lumber Company's Railroad; Ellwood Connecting Railroad Company; Elmira & Lake Ontario Railroad Company; Elmira & Williamsport Railroad Company; Elmira & Seneca Lake Traction Company; Elmira Water, Light & Railroad Company; Elmore & Southwestern Railroad; El Paso & Juarez Traction Company; El Paso Electric Railway Company; El Paso, Kansas City Short Line; Empire & Southeastern Railroad Company; Empire Lumber Company's Railroad; Emporium & Rich Valley Railway Company; England & Clear Lake Railway Company; Englewood, Alexandria & Southwestern Railroad Company; Eppa & Northwestern Railroad Company; Erie & Central Pennsylvania Railroad Company; Erie & Kalamazoo Railroad Company; Erie Railroad Transit Line; Erie Railroad Transit Canal Line; Erie Traction Company; Eastern Railroad Company; Eastern Wisconsin Electric Company; Estre Navigation Company; Escambia

Land & Manufacturing Company's Logging Railroad; Estacado & Gulf Railroad Company; Euclid Railroad Company; Eureka & Freshwater Railway Company; Eureka & Palisade Railway Company; Eureka Nevada Railroad; Eureka Lumber Company's Railroad; European & North American Railway Company; Evansville & Bowling Green Packet Company; Evansville, Indianapolis & Terre Haute Railway Company; Evansville Terminal Railway; Fairland, Franklin & Martinsville Railroad Company; Fairmount & Mannington Railroad Company; Fairmount, Shinneton & Clarksburg Railway Company; Farnsworth Lumber Company's Railroad; Fayetteville & Little Rock Railway Company; Fayette County Railroad Company; Fentress County Railroad Company; Finkbine Lumber Company's Railroad; Florida & Georgia Railway Company; Florida Coast Island Navigation Company; Florida Railway Company; Flovilla & Indiana Springs Railway Company; Flowers Brothers Lumber Company's Railroad; Flynn Lumber Company's Railroad; Fort Collins Development Railway Company; Fort Scott Central Railway Company; Fort Smith & Western Railroad Company and A. L. Mills, Receiver; Fort Smith Union Depot Company; Fort Wayne & Decatur Traction Company; Fort Wayne & Jackson Railroad Company; Fort Wayne & Detroit Railroad Company; Fort Worth & Denver Terminal Railway Company; Fostoria & Fremont Railway Company; Fostoria & Northern Transportation Company; Foster Latimer Lumber Company's Railroad; Fox Creek Railroad; Frank Waterhouse & Company; Franklin & Tilton Railroad Company; Freehold & Jamesburg Agricultural Railroad Company; Freeo & Delta Railroad Company; French Broad Railroad Company; Frenchton & Arlington Railroad; Fulton Navigation Company; Furon Boat Line; Galesburg & Western Railroad Company and T. M. Cox, Receiver; Galveston & Western Railway Company; Galveston, Beaumont Northeastern Railway Company; Galveston

Terminal Railroad Company; Galveston Wharf Company; Garnerville Railroad Company; Gary & Interurban Railway Company; Gary Connecting Railway Company; Gary & Western Railway Company; Gennessee Valley Canal Railroad Company; Gennessee Valley Terminal Railroad Company; Geneva Lumber Company's Railroad; Georges Valley Railroad Company; Georgia Granite Railroad Company and F. T. Mason, Receiver; Georgia Marble Company's Railroad; Georgia Railroad & Banking Company; Georgetown & Tennallytown Railway Company; Gilpin Railroad Company; Glasgow Railway Company; Glendale Railroad Company; Glenfield & Western Railroad Company; Glenn Springs Railroad Company; Glenwood Railroad Company; Gloversville & Bradalbin Railroad Company; Goble, Nehalem & Pacific Railway Company; Golconda & Adelaide Railroad; Golden Circle Railroad Company; Goldfield Consolidated Milling & Transportation Company; Goose Lake & Southern Railway Company; Goshen & Deckertown Railway Company; Goshen, South Bend & Chicago Railway Company; Gouverniur & Oswegatchia Railroad Company; Grafton & Belington Railroad Company; Grand Rapids & Northwestern Railroad; Grand Rapids, Kalkaska & Southeastern Railroad Company; Grand River Valley Railway Company; Grande Ronde Lumber Company's Railroad; Grand Trunk Junction Railway Company; Grand Trunk Pacific Railway Company; Granite City & East St. Louis Terminal Railroad Company; Granite City & Mississippi River Railroad; Granite Railway Company; Grass Creek Terminal Railway Company; Gray Lumber Company's Tram Road; Green Bay Transportation Company; Grays Point Terminal Railway Company;

The Greene Railroad Company; Greenfield & Southeastern Railway; Greenville Southern Railway Company; Greenville, Spartanburg & Anderson Railway Company; Greenville & Vanceboro Railroad

Company; Greenville Northwestern Railway Company and N. W. Moursund, Receiver; Greenville & Western Railway Company; Greenwood Railroad Company; Greigsville & Pearl Creek Railroad Company; Griffin Magnolia & Western Railway Company; Groves Creek Railroad; Gualala River Railroad; Gulf & Chicago Railway Company; Gulf, Beaumont & Great Northern Railway Company; Gulf, Brownwood & Cisco Railway Company; Gulf Line Railway Company; Gulf Coast Transportation Company; Gulf Cypress Lumber Company; Gulf, Hutchinson & Northwestern Railroad; Gulf, Sabine & Red River Railroad; Gunflint & Lake Superior Railroad Company; Hammond & Eastern Railroad; Hammond Lumber Company's Railroad; Hancock & Calumet Railroad Company; Hanging Rock Iron Company; Hannibal Union Depot Company; Hanover Railway Company; Hardy Creek & Eel River Railroad Company; Harkin Transportation Company; Harlem River & Port Chester Railroad Company; Harrisburg, Portsmouth, Mt. Joy & Lancaster Railroad Company; Harrison Branch Railroad Company; Hartford & Connecticut Western Railroad Company; Hartford & New York Transportation Company; Hartford Eastern Railway Company; Haynesville & Montgomery Railroad Company; Hayts Gernerz, Ovid & Willard Railroad Company; J. H. Heald & Company's Railroad; Heck Belt Line Railroad Company; Hetch Hetchy & Yosemite Valley Railway Company; Hibernian Mine Railroad Company; Hibernia Underground Railroad Company; Hicks Run Railroad Company; Higginsville Switch Company's Railroad; High Bridge Railroad Company; Hixon, Sumter & Northwestern Railway; Hoboken Railroad, Warehouse & Steamship Connecting Company; Helston Valley Railway Company; Holyoke & Westfield Railroad Company; Hemar & Southeastern Railroad; Home Avenue Railroad Company; Hepatsong Railroad Company; Hornell & Dansville Railroad Company; Horn Pond

Branch Railroad Company; Houlton Lumber Company's Railroad; Hudson Portland Cement Company's Railroad; Hudson River Bridge Company; Humbolt Logging Railway Company; Huntington & Big Sandy Railroad Company; Hyner Run Railroad; Idaho & Northwestern Railway Company; Idaho Southern Railroad Company and S. C. McWatters, Receiver; Illinois Traction System; Illinois Western Railway Company; Illwaco Railroad Company; Indiana Stone Railroad Company; Indianapolis, Crawfordsville & Danville Electric Railway Company; Indianapolis, Newcastle & Eastern Traction Company; Indian Creek & Pond River Railroad Company; Industrial Lumber Company's Tram Road; Independence & Monmouth Railway; Indiana Service Corporation; Indianapolis & Louisville Railway Company; Inland Lines Limited; Inland Railway Company; Inman Packet Company; Interior & West Virginia Railroad Company; International Mercantile Marine Company; International Navigation & Trading Company; International Railway of Maine; International Transportation Company; Inter Ocean Steamboat Company; Interstate Consolidated Street Railway Company; Inverness Railway & Coal Company; Ione & Eastern Railroad Company; Iowa & Southwestern Railroad Company; Iowa Central & Western Railway; Iowa Midland Railway; Iowa Railway & Light Company; Iowa Traction Company; Iowa Transfer Railway Company; Iron Belt Railroad; Iron Mountain & Green Briar Railroad Company, Iron Mountain Railway Company; Island Creek Railroad Company; Island Railroad Company; Ivorydale & Millcreek Valley Railway Company; Jackson, Lansing & Saginaw Railroad Company; Jackson & Southeastern Railroad Company; Jacksonville & Mayport Steamboat Company; Jacksonville & Midland Railway Company; Jamestown & New Port Ferry Company; Jamaica & South Shore Railroad Company; Jamestown, Franklin & Clearfield Railroad Company; Jasper & Eastern

Railway Company; Jennings & Northeastern Railroad Company; Jennings Brothers Railroad; Johnson, Lagoon & Northern Railway Company; Johnsonburg Railroad Company; Johnstown, Gloversville & Kingsboro Horse Railroad Company; Joliet & Northern Indiana Railroad Company; Kansas City & Southwestern Railway Company of Kansas; Kalamazoo, Allegheny & Grand Rapids Railroad Company; Kalamazoo & South Haven Railroad Company; Kanawha Traction & Electric Company; Kankakee & Seneca Railroad Company; Kansas City, Burlingame & Western Company; Kansas City, Mexico & Orient Railroad Company and W. T. Kemper, Receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City, Rock Island Railway Company; Kansas City, St. Louis & Chicago Railroad Company; Kansas City, Tulsa & Southwestern Railroad Company; Kansas Southern & Gulf Railroad Company and G. E. Morris, Receiver; Kaslo & Slocan Railroad Company; Keaseville, Ausable Chasm & Lake Champlain Railroad Company; Keller Chemical Company's Railroad; Kendall & Sulphur Springs Railway Company; Kennebunk & Kennebunkport Railroad Company; Kenneys Creek Railroad Company; Kentucky Lumber & Veneer Company's Railroad; Kentucky Valley Railroad Company; Keokuk & Hamilton Bridge Company; Keokuk Union Depot Company; Kettle Valley Railway Company; Kingston & Snow Hill Railroad Company; Kinkera & New Lisbon Railroad Company; Kinzie Brothers Steamboat Company; Kinzua Railway Company; Kinzua Hemlock Railroad Company; Kinzua Valley Railroad Company; Kirby Lumber Company's Tram Road; Kittanning Run Railroad Company; Klamath Lake Railroad Company; Knox Railroad Company; Koolah Railway Company, Ltd.; Kootenai Valley Railway Company; Koreshan Unity Railway Company; La Fayette Union Railway Company; La Follette Coal, Iron & Railway Company; Laganda & Western Rail-

way Company; Lake Champlain Steamboat Line; Lake Erie, Bowling Green & Napoleon Railway Company and C. G. Taylor, Receiver; Lake Griffin Transportation Company; Lake Hancock & Claremont Railway Company; Lake Houtseng Railroad Company; Lake Michigan Car Ferry Transportation Company; Lake Ontario & Bay of Quinte Steamboat Company, Ltd.; Lake Transfer Company; Lake Whatcom Logging Company's Railroad; Lancaster & Quarryville Railroad Company; Lancaster, Oxford & Southern Railway Company; Lansing Manufacturing Railroad Company; Lansing Transit Railway Company; Laona & Northern Railway; Lathrop-Hattes Railway Company; Latrobe-Connellsville Coal & Coke Company's Railroad; Lauderdale & Northwestern Railroad Company; Laurel & Tallahoma Western Railway; Laurel Railway Company of Virginia; Laurelton & Pine Creek Railroad; Learned Logging Company's Railroad; Leavenworth, Kansas & Western Railway Company; Lebanon Thornton Traction Company; Leech Lake & Northern Railway Company; Leesville East & West Railroad Company; Lehigh & New York Railroad Company; Lehigh & Oxford Railroad Company; Lehigh & Pavilion Railroad Company; Lehigh Coal & Navigation Company; Lehigh Valley Railway Company; Leland Southwestern Railroad Company; Lewisburg & Roneavorta Electric Railway Company; Lewisburg & Tyrone Railroad Company; Lewiston & Auburn Railroad Company; Lewiston & Southeastern Railroad Company, Lexington Union Station Company; Liberty White Railroad Company; Licking River Railroad Company; Lima Belt Railway Company; Lima Honceye Light & Railroad Company; Lima Southern Railway Company; Lincoln Northern Railway Company; Litchfield & Madison Railway Company, Lithonia & Arabia Mountain Railway; Little Falls & Dolgeville Railroad Company; Little River Railway Company of Arkansas; Little Rock, Sheridan &

Saline River Railway Company; Little Schuylkill Navigation Railroad & Coal Company; Livingston & Southeastern Railway Company; Livonia & Lake Conesus Railroad Company; Lockhart Railroad Company; London & Port Stanley Railway; Long Branch Coal & Railroad Company; Long Island Company, North Shore Branch; Longwood Valley Railroad Company; Lorain & Ashland Railroad Company; Lorain & Southern Railroad Company; Lorama Railroad Company; Lordsburg & Pyramid Railroad; Los Angeles & San Diego Beach Railway Company; Lotbinier & Magantic Railway Company; Louisiana & Eastern Railway; Louisiana & Mississippi Railroad Transfer Company; Louisiana Central Railroad Company; Louisiana Central Railway Company; Louisiana Nickel Plate Railway Company; Louisville Bridge Company; C. H. Loveland's Railroad; Lowell & Andover Railroad Company; Ludington Transportation Company;

Lucaston Railroad Company; Ludington & Northern Railroad Company; Ludlow & Southern Railway Company; Lushrmann & Western Railway Company; Laurinburg & Southern Railroad Company; McKean & Buffalo Railroad Company; McKeesport & Clairton Connecting Railway Company; C. V. McMilliam Company's Logging Railroad; McRae Terminal Railway Company; McCrory & Reedsville Southern Railway Company, and H. W. Hermingham, Receiver; Macomb & Western Illinois Railway Company; Mahoning Coal Railroad Company; Mahoning State Line Railroad Company; Mahoning Valley Railway; Mahopac Falls Railroad Company; Maine Steamship Company; Mammoth Cave Railroad Company; Manahawkin & Long Beach Transportation Company; Manchester & Lawrence Railroad Company; Manchester, Dorsett & Gransville Railroad Company; Mangham & Northeastern Railway Company; Manhattan Navigation Company; Manistee & Luther Railroad Company; Manitoba Great Northern Rail-

road Company; Manitou Steamship Company; Manns Creek Railroad; Mapleton & Rock Ridge Railway Company; Marathon County Railway Company; Marbury & Kingston Railroad; Marengo, Choctaw & Meridian Line Railway Company; Marginal Railroad; Maricopa & Phoenix Railroad Company; Marion Railway Corporation; Marietta, Columbus & Cleveland Railroad Company, and D. P. Terpy, Receiver; Marine Railway Company; Marine Merchants Terminal Company; Marion & Bluffton Traction Company; Marlborough Railroad Company; Maryland & Pennsylvania Terminal Railway Company; Mary Lee Railroad; Marshall & East Texas Railway Company; Marquette & Bessemer Dock Railroad & Navigation Company; Mason Lumber Company's Railroad; Maumee Valley Railways & Light Company; Mayville & Lexington Railroad Company; Meacham Lumber Company's Railroad; Meadows Land & Zediker Railroad Company; Meadville & Summerville Railroad Company; Memphis & Charleston Railway Company; Memphis & Lake View Railway Company; Memphis & State Line Railroad Company; Memphis Union Station Company (Terminal Company); Merchants Mutual Line; Mesaba Railway Company; Meto Valley Railway Company and J. A. Watkins, Receiver; Metropolitan Rapid Transit Light & Power Company; Mexican American Steamship Company; Mexican Railway Company; Mexican Northwestern Railway Company; Michigan City, Chicago & Western Transportation Company; Michigan, Indiana & Illinois Line; Midland Railway Company; Middlebrook, Graniteville & Belleview Railroad Company; Middleburgh & Schoharie Railroad Company; Middletown, Unionville & Water Gap Railroad Company; Midway & Sakdale Railway Company; Milford & Woonsocket Railroad Company; Milford, Attleboro & Woonsocket Street Railway Company; Milford, Franklin & Providence Railroad Company; Mill Creek & Little River Railway & Navigation

Company; Mill Creek & Mine Hill Railroad Company; Millstone & New Brunswick Railroad Company; Mills Steamboat Company; Milltown Air Line Railway; Mills Valley & Mt. Tamakpais Scenic Railway Company; Millner & North Side Railroad Company; Minden East & West Railway Company; Minneapolis, Anoka & Cuyuma Range Railway Company; Minneapolis, St. Paul & Ashland Railway Company; Minnesota & Manitoba Railroad Company; Minnesota & Northwestern Railroad Company; Minnesota & North Wisconsin Railroad Company; Minnesota, Dakota & Pacific Railroad Company; Minnesota Transfer Railway Company; Minster & Laramie Railway Company; Minster City, Southern & Western Railroad Company; Mississippi & Alabana Railroad Company; Mississippi Sugar Belt Railroad; Mississippi Valley Railroad Company; Missouri River Packet Company; Modic Northern Railway Company; Mohawk Mining Company's Railroad; Mohawk & Malone Railway Company; Monocacy Valley Railroad Company; Mono Lake Railway & Lumber Company; Monroe & Greenville Railroad Company; The Monroe & Southwestern Railway Company; Montana Eastern Railroad Company; Montana Railway Company; Montauk Steamboat Company; Ltd.; Monte Ne Railway Company; Montgomery & Erie Railway Company; Montreal & Atlantic Railway Company; Montreal & Planters Steamboat Company; Montrose Railroad Company; Moosic Mountain & Carbondale Railroad Company; Morgan Run Railroad Company; Morris & Essex Railroad Company; Morris & Essex Extension Railroad Company; Moshannon Coal Mining Company; Mount Carbon & Port Carbon Railroad Company; Mount Carmel Railroad Company; Mount Gilead Short Line Railroad Company; Mount Holly, Lumberton & Madford Railway Company; Mount Penn Gravity Railroad Company; Mount Pleasant & Broad Ford Railroad Company; Mount Pleasant Southern Railway Company; Mount Washington Railway Com-

pany; Mountain Central Railway Company; Mountain Quarries Company; Mexahala & Bristol Railway Company; Muncie Belt Railway Company; Nantucket Railroad Company; Nantucket Central Railroad Company; Nashua & Acton Railroad; Nashua, Acton & Boston Railroad Company; Nashville & Decatur Railway Company; Nashville & Lowell Railroad Corporation; Nashville Terminal Company; Nashville Terminal Realty Company; Nassau Electric Railroad Company; Natchez, Ball & Shreveport Railway Company; Natchez Pass Railway Company; Natchitoches Railway & Construction Company; National City & Otay Railway Company; National Railroad Company of New Mexico; National Railways of Mexico; National Tube Company's Railroad; Native Lumber Company's Railroad; Natural Bridge Railway Company; Nelson & Fort Sheppard Railway Company; Nesquehoning Valley Railroad Company; Nevada & California Railway Company; Nevada Short Line Railway Company and H. J. Humphreys, Receiver; Newark & Bloomfield Railroad Company; Newark & Hudson Railroad Company; Newark & New York Railroad Company; New Berlin & Winnifield Railroad Company; New Boston Railroad Company; New Castle & Butler Railway Company; Newell Bridge & Railway Company; New England Granite Railroad Company; New Hanover Transit Company's Railroad; New Haven & Dunbar Railroad Company; New Haven & Northampton Company; Newhouse, Copper Gulch & Savior Lake Railroad Company; New Jersey & Pennsylvania Railroad Company and F. V. Pitney, Receiver; New Jersey Junction Railroad Company; Newport & Shermans Valley Railroad Company; Newport News & Hampton Railway Gas & Electric Company; New Westminster Southern Railway Company; Newton Falls & Northern Railroad Company; New York & Cuba Mail Steamship Company; New York & Harlem Railroad Company; New York & Rockaway Beach Railway Com-

pany; New York Bay Railroad Company; New York, Brooklyn & Manhattan Beach Railway Company; New York Central & Niagara River Railroad Company; New York Connecting Railroad Company; New York Dock Company's Terminal Railway; New York, Lackawanna & Western Railroad Company; New York Short Line Railroad Company; Niagara Falls Branch Railroad Company; Niagara Navigation Company, Ltd.; Nittany Valley Railroad Company; Noland Land & Transfer Company; Norfolk & Mobjack Steamboat Company; Norfolk County Timber Corporations Railroad; Normans Southeastern Railway Company; Norristown & Main Line Railroad Company; Norristown Junction Railroad Company; North Bend & Eastern Railroad Company; North Brookfield Railroad Company; North Carolina Railroad Company; North Coast Powder Company; North Coast Railroad Company of the State of Washington; Northeast Texas Railway Company; North Pacific Steamship Company; Northern Coal & Iron Company's Railroad; Northern Dakota Railway Company; Northern Steamship Company; Northern Electric Railway Company and U. P. Coughlan, Receiver; Northern Maine Seaport Railroad Company; Northern Michigan Transportation Company; Northern Mississippi Railway Company; Northern Railroad; North Louisiana Railroad Company; North Pennsylvania Railroad Company;

North State Railroad Company; Northern Ohio Railway Company; Northwestern Coal & Mining Company's Railroad; Northwestern Coal Railway Company; Northwestern Improvement Company; Northwestern Lumber Company's Railroad; Northwestern Ohio Railway & Power Company; Northwestern Pennsylvania Railway Company; Northwestern Toll Line Company; Morton & Northern Railway; Norway Branch Railroad Company; Norwich & New York Propeller Company; Norwich & Worcester Railroad Company; Nowata Pipe Line

Company; Nyack & Northern Railroad Company; Oakdale & East Side Railroad Company; Oak Grove & Georgetown Railroad Company; Oakland, Antioch & Eastern Railway; Oberlin & La Grange Railway Company; Ocalla & Southwestern Railroad Company; Ocalla Northern Railroad Company; Ogden & Northwestern Railroad Company; Ohio & Baltimore Short Line Railway Company; Ohio River & Columbus Railway Company; Ohio River Passenger Railway Company; Ohio Sterling Railway Company; Oklahoma & Great Eastern Railroad Company; Oklahoma Railway Company; Oklahoma Southwestern Railway Company; Old Dominion Steamship Company; Old River & Kissatchi Railway; Olean, Bradford & Warren Railway Company; Olean Railroad Company; Oliver Iron & Steel Company's Railroad; Olive Sternsberg & Company's Timber Company; Omaha Bridge Terminal Company; Old Colony Railroad Company; Oneida Railway Company; Onoway & North Michigan Railway Company; Ontario, Carbondale & Scranton Railway Company; Open River Railway & Navigation Company; Orangeburg Railway; Ore Belt Railroad Company; Oregon Eastern Railway Company; Oregon State Portage Railway; Oregon Trunk Railway Company; Oregon-Washington Railway Company; Orovills & Nelson Railroad Company; Oshkosh Transportation Company; Ostrander Railway & Timber Company; Oswego & Rome Railroad Company; Oswego & Syracuse Railroad Company; Ouachita Valley Railway Company; Owensboro & Nashville Railroad Company; Owl Bayou Railroad; Ozark Valley Railroad Company and R. A. Long, Receiver; Pacific & Eastern Railway; Paroda Railroad Company; Parkersburg Branch Railroad Company; Passaic & Delaware Railroad Company; Passaic & Delaware Extension Railroad Company; Passenger Belt Railway Company; Pattersons Creek & Potomac Railroad Company; Paw Paw Railroad Company; Pearl River & Gulf Railway Company; Pearl River Lumber

Company's Railroad; Pearl River Transportation Company; Pecksport Connecting Railway Company; Pe Ell & Columbia River Railway; Pemberton & Hightown Railroad Company (Union Transportation Company, Lessee); Pemigowasset Valley Railroad Company; Peninsular Lumber Company's Railroad; Peninsular Railroad Company; Pennsylvania & Atlantic Railroad Company (Union Transportation Company, Lessee); Pennsylvania & New York Canal & Railroad Company; Pennsylvania Eastern Railroad Company; Pennsylvania, Monongahela & Southern Railroad Company; Pennsylvania Tunnel & Terminal Railroad Company; Pennsylvania Western & Ohio River Connecting Railway Company; Penn Yan & Lake Shore Railway; Pensacola & Perdido Railroad Company; Pensacola, Alabama & Tennessee Railroad Company; Peoples Railway Company; Peoria, Bloomington & Champaign Traction Company; Peoria, Lincoln & Springfield Traction Company; Peoria Northern Railway Company; Peoria Southern Railway Company; Pere Marquette Railroad of Indiana; Perla Southern Railroad Company; Perth Amboy & Woodbridge Railroad Company; Petersborough & Hillsborough Railroad Company; Petersborough Railroad Company; Philadelphia & Baltimore Central Railroad Company; Philadelphia & Beach Haven Railroad Company; Philadelphia & Brigantine Railroad Company; Philadelphia & Delaware County Railroad Company; Philadelphia & Frankfort Railroad Company; Philadelphia & Long Branch Railroad Company; Philadelphia & Reading Terminal Railroad; Philadelphia & Trenton Railroad Company; Philadelphia, Germantown & Norristown Railroad Company; Philadelphia, Harrisburg & Pittsburgh Railroad Company; Philadelphia, New Orleans Transportation Company; Philip Carey Manufacturing Company's Industrial Railway; Phillipsburg & Susquehanna Valley Railway Company; Phillipsburgh Railroad Company; Pickens & Addison Railway Company; Pickens

& Hackers Valley Railroad Company; Piedmont & Northern Railway Company; Pine Bluff & Arkansas River Railway Company; Pinehurst Railroad Company; Pine Bluff, Sheridan & Southern Railway; Pine Run Railroad Company; Pioche & Pacific Transportation Company; Piqua & Troy Branch Railroad Company; Pittsburgh & Castle Shannon Railroad Company (Electric); Pittsburgh & Connellsville Railroad Company; Pittsburgh & Grass Creek Railroad Company; Pittsburgh & Freeport Railroad Company; Pittsburgh & Northern Railroad Company; Pittsburgh & Northeastern Railroad Company; Pittsburgh, Birmingham & Eastern Railroad Company; Pittsburgh County Railway Company; Pittsburgh, McKeesport & Youghiogheny Railroad Company; Pittsburgh Railroad Company; Pittsburgh Terminal Railroad & Coal Company; Pittsburgh, Westmoreland & Somerset Railroad Company; Pittsfield & North Adams Railroad Company; Pittsford & Rutland Railroad Company; Placerville & Lake Tahoe Railway; Plattsburgh & Dannemora Railroad Company; Plymouth Railroad Company; Poshuck Railroad Company; Point Pleasant, Buchannon & Tygert Valley Railroad Company; Pollock & Angelina Valley Transportation Company; Pomeroy & Newark Railroad Company; Ponce & Guayama Railroad Company; Popular Bluff & Dan River Railway Company; Poplarville Lumber Company's Railroad; Port Arthur, Duluth & Western Railway Company of Minnesota; Portland & Northern Railway Company; Portland & Southeastern Railroad Company; Portland Union Railway Station Company; Port Arthur Canal & Dock Company; Portsmouth & Tagart Valley Railroad Company; Potomac, Fredericksburg & Piedmont Railroad Company; Potomac Railroad Company; Prescott & Reader Railroad Company; Prescott, Reader & Fordyce Railway Company; Prince Edward Island Railway Company; Proctor Coal Company's Railroad; Providence Coal Company's Railroad; Providence & Worcester Railroad; Providence,

Warren & Bristol Railroad Company; Providence, Webster & Springfield Railroad Company; Pueblo Union Depot & Railroad Company; Puget Sound & Baker River Railway Company; Puget Sound International Railway & Power Company; Pacific Coast Company; Pacific Logging & Timber Company's Railroad; Pacific Portland Cement Company's Railroad; Pacific Mail Steamship Company; Paducah Union Depot Company; Palmer Lumber Company's Railroad; Panther Creek Lumber Company's Railroad; Panther Creek Railroad; Parker Bell Lumber Company's Railroad; Quakertown & Eastern Railroad Company; Qu'Appelle, Long Lake & Saskatchewan Railroad Company; Quebec Central Railway Company; Quebec Oriental Railway Company; Quebec Steamship Company, Ltd.; Quebec & Torch Lake Railroad Company; Quincy Quarries Company's Railroad; Railway Transfer Company of Minneapolis; Raleigh & Western Railway Company; Rapid City Black Hills & Western Railroad Company; Rapides Lumber Company's Railroad; Raritan Terminal & Transportation Company; Rawhide Western Railway Company; Raymondville & Waddington Railroad Company; Reading Belt Railway Company; Red Mountain Railway Company; Red River & Rocky Mount Railroad Company; Red River Lumber Company's Railroad; Red River Valley Railroad Company of Arkansas; Red River Valley Railroad Company of Kentucky; Red Springs & Bowmore Railroad; Register & Glennville Railroad Company; Rensselaer & Saratoga Railroad Company; Reynoldsville & Falls Creek Railroad Company; Rhode Island & Massachusetts Railroad Company (in Mass.); Richelieu & Ontario Navigation Company, Ltd.; Richmond, Fredericksburg & Potomac & Richmond & Petersburg Connecting Company; Richmond & Rappahannock River Railway Company; Richmond, Rappahannock & Northern Railway; Richmond Washington Railway; Rich Patch Railroad; Ridgway & Clearfield Railroad

Company; Rio Grande & Pagosa Springs Railway Company; Rio Grande & Santa Fe Railroad Company; Rio Grande & Southwestern Railroad Company; Rio Grande Gunnison Railroad Company; Rio Grande Junction Railroad Company; Rio Grande, Pueblo & Southern Railroad Company; Rio Grande Railroad Company of Texas; Rio Grande Railway Company; Rio Grande Bengre De Cristo Railroad Company; Rison & Mt. Elha Railroad Company; Riverside & Arlington Railroad Company; Riverside & Gulf Railway Company; Roanoke Railroad & Lumber Company; Roanoke River Railroad Company; Robbins Railroad Company; Robinson Lake & Lumber Company's Railroad; Roby & Northern Railroad Company; Rochester, Hornellsville & Lackawanna Railroad Company; Rochester, New York & Pennsylvania Railroad Company; Rockaway River & Montville Railroad Company; Rockdale Railroad Company; Rockford Belt Railway Company; Rock Island Company; Rock Island Frisco Terminal Railway Company; Rockport, Langdon & Northern Railway Company; Rockport Railroad Company; Rockport, Shenandoah & Des Moines Railway Company; Rockwood & Tennessee River Railway; Rocky Hill Railroad & Transportation Company; Rocky Mount & Northern Railroad; Rocky Mountain Railway Company; Roddis Lumber Company's Railroad;

Rome & Clinton Railroad Company; Rome, Watertown & Ogdensburg Railroad Company; Roper Lumber Company's Railroads; Rose Creek Railroad; Roosevelt & Western Railroad; Rose Hill Sugar Company's Railroad; Roswell Railroad Company; Rowland Lumber Company's Railroad; Rowlesburg & Southern Railroad; Ruddock, Bonnet Carre & Northern Railroad; Rumbarger Lumber Company's Railroad; Rutland Transit Company; Rutland & Whitehall Railroad Company; Sacramento & Woodland Railroad Company and J. P. Coghlan, Receiver; Sacramento Southern Railroad Company; Sacramento

Valley Electric Railroad Company; San Antonio Railway Company; San Antonio, Uvalde & Gulf Railroad Company and A. R. Ponder, Receiver; Santa Maria Union Depot Company; Saginaw & Manistee Lumber Company's Railroad; Saginaw & Ouachita River Railroad Company; St. Charles Air Line Railroad; St. Clair & Western Railroad; St. Croix Duluth Railway; St. Francis River Railroad; St. Joseph & Central Branch Railway Company; St. Joseph & Union Depot Company; St. Joseph Chicago Steamship Company; St. Louis & Claire Railroad Company; St. Louis & Illinois Belt Railway; St. Louis & Oklahoma Southern Railway; St. Louis, Decatur & Champaign Railway Company; St. Louis, El Reno & Western Railway Company and A. L. Mills, Receiver; St. Louis, Memphis & Southeastern Railroad Company; St. Louis, San Francisco & New Orleans Railroad Company; St. Louis Terminal Transfer Company; St. Marys & Eastern Railroad Company; St. Marys & Western Railroad Company; St. Marys & Kingsland Railroad Company; St. Marys River Steamboat Company; St. Paul Bridge & Terminal Railway Company; St. Paul Union Depot Company; St. Petersburg Transportation Company; St. Tammany & New Orleans Railway & Ferry Company; Santa Fe Refrigerator Despatch Company; Salina Bayou Railway Company; Saline River Railway Company; Saline Valley Railroad Company; Salisbury & Albert Railway; Salisbury Railroad Company; Salmon Brick & Lumber Company's Railroad; Salt Lake & Mercur Railroad Company and L. Landis, Receiver; Salt Lake City Union Depot & Railroad Company; San Bernardino & Redlands Railroad Company; Sandersville Railroad Company; Sandusky, Norwalk & Mansfield Electric Railway Company and C. G. Taylor, Receiver; Sanford & Troy Railroad Company; San Francisco & Eureka Railway Company; San Francisco & Napa Railway Company; San Francisco, Napa & Calistoga Railway; Santa Fe,

Liberal & Englewood Railroad Company; Santa Fe, Raton & Des Moines Railroad Company; Sarasota & Boyne Transportation Company; Saratoga & Schenectady Railroad Company; Saugerties & New York Steamboat Company; Savage River Railroad Company; Savannah, Hinesville & Western Railroad Company; Sawyer River Railroad Company; Schoharie Valley Railway Company; Schuylkill & Lehigh Railroad Company; Schuylkill Valley Navigation & Railroad Company; Scottac Railway Company; Scott County Railroad; Scotts City Northern Railway Company; Scranton & Spring Brook Railroad Company; Scranton, Dunmore & Moosic Lake Railroad Company; Seaboard Company; Seaboard & Gulf Steamship Company; Seattle Southeastern Railway Company; Sevier Railway Company; Shamokin, Sunbury & Lewisburg Railroad Company; Shamokin Valley & Pottsville Railroad Company; Shamrock & Western Railway Company; Shaver Lake Railroad; Shelby County Railway Company; Shenandoah Iron & Coal Company's Railroad; Sheridan & Williamina Railroad Company; Shinglehouse Railroad; Shreveport Bridge & Terminal Railroad; Sierra Nevada Wood & Lumber Company's Railroad; Seirra Valley Railway Company; Sieata Longboat Steamship Company; Silber City Mines, Altos & Mongollon Railroad Company; Silver Lake Railway Company; Silver Lake Railway & Lumber Company; Silver Peak Railroad Company; Silver Springs & Western Railroad Company; Silverton Lumber Company's Railroad; Simpson Railroad; Sharon & Wheatland Street Railway Company; Skagit River Navigation & Trading Company; Skinner Car Ferry Company; Slate Run Railroad Company; Sligo Furnace Company's Logging Railroad; W. T. Smith Lumber Company's Railroad; Smithonia & Dunlap Railroad Company; Smithonia, Danielsville & Gainesville Railroad Company; Somerset & Cambria Railroad Company; Songo River Line, Incorporated; Snake River Valley Railway Company;

Shore Line Railroad Company; South Branch Railroad Company of New Jersey; South Branch Railway Company; South Easton & Phillipsburg Railroad Company; South Carolina Western Railway Company; Southeastern Ohio Railway Company; Southern Illinois & Missouri Bridge Company; Southern Illinois Railway & Power Company; Southern Oregon Traction Company; Southern Pennsylvania Railway & Mining Company; Southern Railway & Power Company; Southern States Lumber Company's Railroad; South Florida & Gulf Railway Company; South Park & Leadville Short Line Railroad; South San Francisco Belt Railway; Southwestern Railway Company of Oregon; Southern Extension Railway Company; Southern Railway & Navigation Company; Southeastern Railway Company of Texas; South W[illegible]mington & Southern Railroad Company; Sparr[illegible] Kroll Logging Railway; Spokane, Falls & Northern Railway Company; Springfield & Northeastern Railway Company; Springfield Belt Railway Company; Springfield, Troy & Piqua Railroad Company; Spuytan Duyvil & Port Morris Railroad Company; Standard & Hernando Railroad Company; Standard Railway & Timber Company; State Line & Sullivan Railroad Company; Steple Valley Smelting & Mining Company's Railroad; Steubenville & Wheeling Traction Company; Steubenville Extension & Pennsylvania Railroad; Steubenville, Wellsburg & Weirton Railway Company; A. W. Stevens Lumber Company's Railroad; Stockyards Terminal Railway Company; Stonington & Watch Hills Ferry Company; Straight Creek Coal & Coke Company's Railroad; Strassburg Railroad Company; Strouds Creek & Muddlety Railroad Company; Sturgis, Goshen, Saint Louis Railway Company; Stuttgart & Rice Belt Railroad Company, and G. N. Peay, Receiver; Sulphur Mining & Railroad Company; Summit Branch Mining Company's Railroad; Summer Phosphate Company's Railroad; Suncock Valley Railroad Company; Superior &

Southeastern Railway Company; Surray, Sussex & Southeastern Railway Company; Survey & Fort Myers Line; Susquehanna & Buffalo Railway; Susquehanna & Eagles Mere Railroad Company; Susquehanna River & Western Railroad Company; Suwanee River & White Sulphur Springs Railway Company; Swartz & Ouachita City Railroad Company; Sylacauga & Wetumpka Railroad; Syracuse & Baldwinsville Railway Company; Syracuse & Milford Railway Company; Takoma, Olympia & Chehalis Valley Railway Company; Tallahassee & Gulf Railroad Company; Tallahassee & Montgomery Railway Company; Tama & Toledo Electric Railway & Light Company; Tampa Bay Transportation Company; Tavares & Gulf Railroad Company; Tatum Lumber Company's Railroad; Tehauntepeo National Railway Company; Tennessee Copper Company's Railroad; Tennessee River Navigation Company; T. W. Thayre Company's Railroad; Thomas & Sayreton Railroad; Thompson & Northern Railroad; Thompson Run Coal & Railroad Company; Three Lakes Lumber Company's Railroad; Ticonderoga Railroad Company; Tidewater & Western Railroad Company; Tidewater Power Company; Timpson & Henderson Railway Company; Tintic Range Railroad Company; Tioga & Southeastern Railroad Company; Tionesta Valley & Hickory Railway Company; Tipton Railroad Company; Tivolia Hollow Railroad Company; Toledo & Chicago Railroad Company; Toledo & Rousford Railroad Company; Toledo Belt Railway Company; Toledo, Canada Southern & Detroit Railway Company; Toledo, Ottawa Beach & Northern Railway Company; Toledo Southeastern Railway Company; Toledo Terminal Railroad Company; Tomahawk & Eastern Railway Company; Tombstone & Southern Railroad Company; Tonawanda Island Bridge Company; Towles Steamboat Line; Transportation Railway; Trenton Transportation Company; Tresokow Railroad Company; Trexler & Turrell Lumber Com-

pany's Railroad; Trinity County Lumber Company's Railroad; Tri State Lumber Company's Railroad; Troy & Bennington Railroad Company; Troy & Greenbush Railroad Association; Tuckahoe & James River Railroad Company; Tuskegee Railroad Company; Twin Buttes Railroad; Twin City Belt Railway Company; Unicoi Railway; Union Depot & Railway Company (Denver, Colo.); Union Depot Bridge & Terminal Railroad Company; Union Depot Company (Columbus, O.); Union Freight Railroad Company; Union Pinepolis Saw Tram Road; Union Railroad Company of New York; Union Springs & Northern Railway Company;

Union Steamboat Line; Union Stock Yards & Transit Company; Union Terminal Railway Company; (St. Louis, Mo.); Union Terminal Railroad Company (Sioux City, Ia.); Union Terminal Railroad Company (Buffalo, N. Y.); Union Town & Lickrun Railroad Company; Union Terminal Railroad Company; United New Jersey Railroad & Canal Company; United Steamship Company; United Verde & Pacific Railway Company; Union County Railway Company; Utah Central Railroad Company; Utah Railway Company; Utica & Black River Railroad Company; Utica, Chenango & Susquehanna Valley Railway Company; Utica, Clinton & Binghamton Railroad Company; Valley Connecting Railroad Company; Valley Railroad Company of New York; Valley River Railroad Company; Valley Street Railway Company; Valpariso & Northern Railway Company; Vancouver, Victoria & Eastern Railway & Navigation Company; Vanderbilt Timber, Mining & Southwestern Railway Company; Vermont & Massachusetts Railroad Company; Vermont & Providence Line Railroad Company; Vernon, Greensburg & Rushville Railroad Company; Versailles & Seadlia Railroad Company; Victoria & Sidney Railway Company; Victoria Electric Railroad Company; Vincentown Branch of the Burlington County Railroad Company; Vinegar Bend Lumber

Company's Railroad; Vinton Lumber Company's Railroad; Virginia & Southwestern Railway Company; Virginia & Mt. Airy Railway Company; Virginia Air Line Railway Company; Virginia Anthracite Coal & Railway Company; Virginia, Carolina & Southern Railway Company; Virginia Midland Railway Company; Virginia Navigation Company; Virginia Ore & Lumber Company's Railroad; Virginia & Potts Creek Railroad Company; Waccamaw Railroad; Wainhurst Railroad; Wallace Tugboat & Transportation Company, Inc.; Walkersville & Ireland Railway Company; Walsenburg & Western Railway Company; Ware River Railroad Company; Warren & Saline River Railroad Company; Warren Railroad Company; Warrentown Railroad Company; Warrier Southern Railway Company; Washington & Choctaw Railway; Washington & Glen Echo Railroad Company; Washington & Great Falls Railway & Power Company; Washington & Rockville Railway Company; Washington Central Railway Company; Washington Electric Railway Company; Washington Interburban Railroad Company; Washington Railway & Electric Company; Wautauga & Yadkin Railroad Company and W. J. Grandis, Receiver; Wautauga Railroad Company; Frank Waterhouse & Company, Incorporated; Waukegan, Rockford & Elgin Traction Company and R. C. Peck, Receiver; Webber Falls Railroad Company; Wellsburg & State Line Railroad Company; Wellsville & Buffalo Railroad Corporation; Wenatches Valley & Northern Railway Company; West Clarion Railroad Company; Westerman Coal & Iron Railroad; Western & Pacific Railroad Company; Western Arizona Railway Company; Western Illinois Railway Company; Western Redwood Lumber Company's Railroad; Western Transit Company; Western Transportation Company; Western Washington Railroad Company; Westinghouse Inter Work Railway Company; Weston Lumber Company's Railroad; West Virginia & Southern Railroad Company; West Vir-

ginia Midland Railroad Company; West Virginia Short Line Railroad Company; Wharton & Northern Railroad Company; Wharton Valley Railway Company; Whitcomb & Morris Railway Company; Whitecastle & Lake Natchez Railroad; White Deer & Loganton Railway Company; White Deer Valley Railroad Company; White Oak Railway Company; Whites Creek Lumber Company's Railroad; White Sulphur Springs & Yellowstone Park Railway Company; White Top Railway Company; Whiteville Lumber Company's Railroad; Whitney Transportation Company; Whitney Company's Railroad; Wheatland Street Railway Company; Wichita Falls Railway Company; Wilcox & Phillips Boat Line; Wilcox Railroad; Wilkes-Barre & Scranton Railway Company; Wilkes-Barre Terminal Railroad Company; Willston & Jackson Belt Railway Company; Wilton & Northern Railroad; Wilton Railroad Company; Winfield, Texas & Gulf Railway Company; Winifreds Railroad Company; Winnsboro Granite Corporation's Railroad; Winona & Western Railroad; Wiscassett, Waterville & Farmington Railway Company; Wisconsion, Minnesota & Pacific Railroad Company; Withlacoochee Transportation Company; Woodward Iron Company's Railroad; Wood River Branch Railroad Company; Woolridge Jellico Coal Company's Railroad; Worcester Consolidated Street Car Company; Worcester, Nashua & Rochester Railroad Company; Wyndotte & Southeastern Railway Company; Wyatt & Donovan Railroad; Wyoming & Pond Creek Railroad; Yankton & Western Railway Company; Yellowstone Park Railway Company; Yellowstone Park Railroad Company (Idaho); Yellowstone Park Railroad Company (of Montana); Yellowstone Park Railway; York, Hanover & Frederick Railroad Company; Yosemite Short Line Railway Company; Youghiogheny & Wick Haven Railroad Company; Youngstown & Austintown Railroad Company; Youngstown & Sharon Street Railway Company; Youngstown & Southern Railway Com-

pany; Youngstown Sheet & Tube Company's Railroad; Zanesville Belt Terminal Railway Company; Zanesville Terminal Railroad Company; Zimmerman, Leesville & Southwestern Railway Company, Zuni Mountain Railroad; Alabama-Tennessee & Northern Railway; Albemarle Steam Navigation Company; Arkansas Railroad Company; Buffalo, Bradford & Kane Railroad Company; Caro Northern Railway Company; Carolina & Northeastern Railroad Company; Chicago & Detroit Steamship Lines; Ft. Smith, Poteau & Western Railroad Company; Galesburg & Western Railroad Company; The Grand Rapids, Holland & Chicago Railway Company; Kane Railroad Company; Keating & Smethport Railroad Company; Kushequa Railroad Company; Lawrenceville Branch Railroad Company; Louisville Bridge & Termina! Railway Company; Manila & Southwestern Railroad Company; Marcellus & Otisco Lake Railway; Meade Run Railroad Company; Middle Tennessee Railroad; Phar & Chotin Barge Service; Richmond-New York Steamship Company; The Shore Line Electric Railway Company and R. W. Perkins, Temporary Receiver; Smethport Railroad Company; Southern Utah Railroad Company; Wolvin Line; Quincy Railroad Company; respondents.

It appearing, That by order dated March 22, 1921, the commission entered upon an investigation into and concerning the reasonableness and propriety of car-distribution rules so far as they apply to privately owned coal cars and cars furnished for railway-fuel coal, with a view to prescribing such just and reasonable rule or regulation as might appear to be necessary;

It further appearing, That said order dated March 22, 1921, was served in the manner provided by law upon all carriers by railroad in the United States subject to the interstate commerce act, said carriers being listed above and hereinafter referred as as respondents;

It further appearing, That a full investigation of the

matters and things involved has been had with respect to carriers serving bituminous-coal mines, and that the commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

And it further appearing, That no reason appears for the continuance of the investigation as to carriers serving solely anthracite-coal mines:

It is ordered, That each of the respondents be, and each is hereby, notified and required to cease and desist, on or before September 1, 1923, and thereafter to abstain, from maintaining and enforcing, in so far as such respondent maintains and enforces, a regulation and practice whereby in the distribution of cars for the transportation of coal among the bituminous-coal mines served by such respondent, whether located upon its line or customarily dependent upon it for car supply, private cars or cars for the loading of bituminous coal for railway fuel are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars.

It is further ordered, That each of the respondents which distributes cars to bituminous coal mines located upon its line or customarily dependent upon it for car supply be, and each is hereby, notified and required to establish on or before September 1, 1923, and thereafter to maintain and enforce a regulation and practice whereby all cars distributed by such respondent to such mines must be distributed on a pro rata basis, and if cars are assigned or consigned to any of such mines and if such cars are placed at the mines to which assigned or consigned, they must be so placed that every mine on the same division or district established by respondent for the distribution of cars shall receive the

same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars must be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged.

It is further ordered, That the present investigation, so far as it in terms covers the distribution of cars at anthracite mines, be, and it is hereby, discontinued.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

GEORGE B. McGINTY,
Secretary.

[SEAL]

EXHIBIT F.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of October, A. D. 1923.

No. 12530.

In Re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

Upon further consideration of the record in the above-entitled proceeding, and of petitions for rehearing filed herein:

It is ordered, That the order entered in this proceeding on June 13, 1923, which was by its terms made effective September 1, 1923, and which was on July 25, 1923, modified so as to become effective on October 1, 1923, and on September 12, 1923, was further modified so as to become effective November 1, 1923, be, and it is hereby, still further modified so that it will become effective on December 1, 1923, instead of on said November 1, 1923; but in all other respects the said order of June 13, 1923, shall remain in full force and effect.

And it is further ordered, That this proceeding be, and it is hereby, reopened for further hearing upon the petitions for rehearing filed herein.

And it is further ordered, That this proceeding be assigned for hearing before Commissioner Aitchison at the offices of the Commission in Washington, D. C., at 10 o'clock A. M., on the 22nd day of October, 1923.

By the Commission:

GEORGE B. McGINTY,
Secretary.

[SEAL]

EXHIBIT G.

Interstate Commerce Commission.

Assigned Cars for Bituminous Coal Mines.

No. 12530.

In Re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

Submitted December 19, 1923. Decided December 23, 1924.

1. Paragraph (12) of section 1 of the interstate commerce act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules.
2. Findings in former report, 80 I. C. C. 520, that the practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of the ratable share contemporaneously distributed to bituminous-coal mines upon their lines which do not receive assigned cars, found for the future to be unjust and unreasonable, and unjustly discriminatory against, and unduly prejudicial to mines not receiving assigned cars, and unduly and unreasonably preferential of mines which are furnished such cars in excess of the ratable proportion, and that cars specially placed by order of the commission under the provisions of paragraph (15) of section 1 of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires, affirmed.
3. Order entered in this proceeding June 13, 1923, the effective date of which has been postponed until January 15, 1925, permitted to become effective on March 1, 1925.

Henry Wolfe Biklé, W. S. Bronson, Kenneth F. Burgess, H. T. Dick, O. W. Dynes, R. V. Fletcher, F. W. Gwathmey, Walter McFarland, W. A. Northcutt, C. C. Paulding, H. R. Preston, Theodore W. Reath, C. J. Rixey, C. M. Sheafe, Jr., and H. A. Taylor for respondents, members of the American Railway Association; J. H. Fishback for Canadian National Railways; Joseph H. Nuelle for New York, Ontario & Western Railway Company; and Eugene S. Williams for Western Maryland Railway Company, respondents.

August G. Gutheim and James W. Carmalt for Berwind-White Coal Mining Company, Westmoreland Coal Company, New River & Pocahontas Consolidated Coal Company, Pennsylvania Coal & Coke Corporation, Pittsburgh Plate Glass Company, Public Service Electric Company, Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner Union Coke Corporation, Rainey-Wood Coke Company, and Island Creek Coal Company; Hugh F. Smith, F. C. Slee, and Ralph J. Baker for Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner-Union Coke Company, and Rainey-Wood Coke Company; Wayne Johnson for Pennsylvania Coal & Coke Corporation; Richard Jones, Jr., for Republic Iron & Steel Company; L. A. Manchester for Youngstown Sheet & Tube Company; Paul D. Cravath, Hoyt A. Moore, and Frederick L. Ballard for Bethlehem Steel Corporation and subsidiaries; Richard V. Lindabury, Charles McVeagh, and Charles S. Belsterling for Illinois Steel Company, Carnegie Steel Company, American Steel & Wire Company, National Tube Company, American Sheet & Tin Plate Company, United States Coal & Coke Company, United States Fuel Company, and H. C. Frick Coke Company; Clifford H. Browder for International Harvester Company and Wisconsin Steel Company; Horace Andrews, W. P. Belden, and John B. Putnam for Cleveland Cliffs Iron Company, Steel Company of Canada, Limited, Perry Iron Company, and Pickands, Mather & Company; C. B. Longley for Ford Motor Company; and E. T. Butler for Trumbull Steel Company and Trumbull Coal Company.

Russell B. Burnside and Charles G. Blakeslee for Public Service Commission of New York.

Shearman & Sterling, Samuel E. Wolf, William C. Speer, James L. Quackenbush, M. S. Sloan, J. C. Edwards, and W. L. Pepperman for various public utilities.

Butler, Lamb, Foster & Pope and Ernest S. Ballard for National Coal Association; A. M. Liveright for Central Pennsylvania Coal Producers' Association; R. W. Ropiequet for Illinois Coal Traffic Bureau; L. C. Boyle and George N. Brown for Southern Ohio Coal Exchange; C. D. Boyd for Harlan County Coal Operators Association and Hazard Coal Operators Exchange; E. L. Greever and Greever & Gillespie for Pocahontas Operators Association and Operators Association of Williamson Field, W. Va.; S. C. Higgins for New River Coal Operators' Association; A. R. Yarborough for Kanawha Coal Operators' Association; C. J. Neekamp for Northeast Kentucky Coal Association; E. J. McVann for Northern West Virginia Coal Operators' Association; W. L. Hammond for White Star Coal Company and Detroit City Gas Company; and Van A. Bittner and W. Jett Lauck for International Union, United Mine Workers of America.

REPORT OF THE COMMISSION ON FURTHER HEARING.

AITCHISON, *Commissioner:*

This case is before us on further hearing. On March 22, 1921, we instituted an investigation upon our own motion, with respect to the reasonableness and propriety of the present car distribution rules of the respondents, i. e., all the steam-railroad carriers subject to our jurisdiction, in so far as such rules apply to privately owned coal cars and cars furnished for railroad-fuel coal, with a view to prescribing such just or reasonable rules or regulations as might appear to be necessary.

On June 13, 1923, after extended hearings and argument, we issued our report, 80 I. C. C. 520, in this proceeding. The rule as proposed by respondents at the hearings pro-

vided in substance that assigned cars, namely, cars for railway fuel and private cars, must be placed at the coal mines to which assigned; that if the assigned cars thus placed at a mine should equal or exceed the mine's pro rata share of the available car supply for that day it should not be entitled to any unassigned cars; but that if the number of assigned cars placed at the mine should be less than its pro rata share for that day it should be given enough unassigned cars in addition to its assigned cars to make up its pro rata share. This rule and the classes of cars it covers are more particularly described in our report, pages 522 *et seq.* We there held that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act, and found:

> that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines

to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

There appears to be no reason for the continuance of the investigation as to carriers serving solely anthracite coal mines, and the present investigation, as far as it in terms covers the distribution of cars at anthracite mines, will be discontinued.

By an order issued at the time of our report, June 13, 1923, we required the respondents, on or before September 1, 1923, to discontinue the regulation and practice found to be unreasonable and unjustly discriminatory in the report and thereafter to establish rules and practices in conformity with our finding. We thus required the carriers to abolish the assigned car rule.

Soon after our report was issued, and before the effective date of our order, petitions for rehearing were filed by the respondents and by a number of owners and users of private cars. The case was reopened upon the petitions filed herein, a hearing was held, briefs were filed, and the case was orally argued. It is now before us upon the voluminous record made in the original hearing and on the

further hearing. Pending the disposition of this case we have from time to time postponed the effective date of our original order. On the further hearing, as in the original hearing, the evidence related to distribution of cars to bituminous mines as distinguished from anthracite mines and our present determination will be so limited.

We shall first deal with assigned cars for railway fuel, and then with assigned private cars.

Assigned Cars for Railway Fuel.

In the original proceeding respondents contended that on any particular day a carrier should be permitted to assign cars to a mine for railway fuel in excess of the mine's pro rata share of cars even though on the following day the mine should ship commercial coal. The carriers now take the position, however, that without conceding the day-to-day assignment of cars to be unlawful, they can get along if permitted to assign cars to mines the entire output of which they take for a substantial period. They now contend only for a rule which will permit the unrestricted placement of cars under the assigned-car rule to such mines. Respondents in argument assume the period to be at least six months or a year.

The principal contentions of the carriers are (1) that we are without authority under the interstate commerce act to abolish the assigned-car rule as applied to cars placed at mines owned by a railroad and furnishing it their entire output for an extended period, six months or more, and to mines from which a carrier purchases the entire output for a like period, and (2) that if we have such authority, the record shows that the rule is reasonable and not unjustly discriminatory.

Situations of individual carriers summarized.—In their petitions for rehearing respondents asked that the case be reopened and evidence heard for the purpose of ascertaining whether the experience of the carriers shown in the table on page 536 of our original report as not using assigned cars, is such as to justify the abolition of the assigned-

car rule. On further hearing witnesses representing eight of the 52 carriers listed in this table testified as to the individual situations on their respective lines. We summarize the showing as to the eight as follows:

The *Great Northern* has not found it necessary to follow the assigned-car practice in securing its coal. Our table is correct in showing that it was not assigning cars in 1920 and on October 1, 1922. For periods of a few days at times the carrier insists that its fuel coal be loaded by the mines in preference to commercial coal. About 53 per cent. of the fuel which the Great Northern uses is obtained from the docks at the head of the lakes and is consumed on its lines east of Wolfe Point, Mont. Box cars are used to a considerable extent for this movement. The remainder of its fuel is obtained from Montana mines, the largest one of which it owns, and from a mine at Fernie, British Columbia. About 94 per cent. of the coal produced west of Wolfe Point is used for company fuel. Part of this comes from small mines with which the carrier has made partial-output contracts to enable them to continue in operation. During the coal strikes of 1919 and 1922 some coal was received by the Great Northern from mines in Illinois. From September, 1922, to April, 1923, between 11,000 and 12,000 cars of coal were received from this source. About 11 per cent. of this coal came in cars which this carrier delivered to the Chicago, Burlington & Quincy to be placed at a mine at Herrin, Ill., with which the Great Northern had a contract for the entire output. The witness produced by this company was not informed as to whether the cars which were thus delivered were placed in excess of the mine's distributive share.

The *Chicago & North Western* originates on its line from 200 to 400 cars of fuel per day for its own use, and from 20 to 200 cars of commercial coal. On an average 30 per cent. is commercial and 70 per cent. fuel coal. The greater portion of the company's fuel comes from its own mine in McCoupin County in central Illinois. A part of its supply comes from mines which it owns near Buxton, Iowa, and

from other mines located in that State and in Wyoming. This company does not follow the assigned-car practice in obtaining its coal. This was true in 1920 and in October, 1922, as shown in the table in our report.

The *St. Louis-San Francisco* has not followed the assigned-car practice in obtaining fuel coal from mines on its own line. In case of car shortage, the mines give the railroad preference in filling orders for coal. About 20 per cent. of its fuel supply is obtained under partial-output contracts from mines off its line, located on short lines in Illinois near St. Louis, except a mine located on the Louisville & Nashville, the output of which is taken jointly by the St. Louis-San Francisco and the Missouri-Kansas-Texas. These two lines furnish a full car supply, if needed at the mine on the Louisville & Nashville, without reference to the existing car supply on that road. Cars are also furnished for loading at the other off-line mines, but the witness called by this carrier was not informed as to whether such cars were placed in excess of the mines' distributive share. The Seaboard Air Line furnishes cars for its coal at mines on the St. Louis-San Francisco. If these mines are given more than their percentage allotment, the excess is equalized as promptly as possible. Of the St. Louis-San Francisco's fuel requirements 25 per cent. is cared for by oil. Except in times of anticipated mine suspension this company does not store coal.

The *Atchison, Topeka & Santa Fe* followed the assigned-car practice in 1920 and was following it on October 1, 1922, in the placement of stock and ballast cars at mines on its line. The company owns 6,000 hopper-bottom stock cars and 2,500 drop-bottom ballast cars. These, the witness for the company testified, are not acceptable to commercial coal loaders, but it is shown that they are loaded at mines which also ship commercial coal and can be dumped in the same manner as ordinary coal cars. They are used exclusively in times of car shortage for company fuel, and are counted against the mines under the assigned-car rule. At other times ordinary gondolas are use for this purpose. This com-

pany consumes about 140 cars of coal a day, 90 per cent. of which is secured from mines on its own line, including its own mines. In times of car shortage about two-thirds of the fuel coal from mines on its line moves in the stock and ballast cars, the remainder in other cars distributed on a pro rata basis. Coal from off-line points is secured from a mine on the Burlington and from one on the Minneapolis & St. Louis. The latter furnishes about four cars a day in Atchison, Topeka & Santa Fe cars. The witness was not informed as to whether these cars are placed at the mine in excess of the commercial ratable distribution. About 60 per cent. of the company's total fuel requirements is met by the use of oil.

The *Carolina, Clinchfield & Ohio* is shown in our original report as assigning cars for its fuel purposes in 1920, and as not following this practice on October 1, 1922. However, the record on further hearing shows that in 1920 this company did not find it necessary to resort to the assigned-car practice. During the almost continuous car shortage that year, when the supply ran as low as 50 per cent. for extended periods, the company was able to secure preferential loading of its coal at the mines with which it contracted. In other words, the mine operator deferred the filling of commercial orders until the railroad's fuel needs were met. Beginning in November, 1922, the carrier began to assign cars, as it was unable to get its contracts filled during the car shortage then existing, and because the coal company with which it contracted for fuel refused to fill its orders in preference to commercial customers. It assigned the cars to a mine the output of which was taken jointly by it and the Southern. It consumes coal at the rate of about 20 cars per day. It has on its lines 25 mines, producing 350 cars of coal per day, which represents 65 per cent. of the total tonnage handled. It owns sufficient cars to care ordinarily for the output of the mines on its line. These cars normally move to southeastern territory and come back regularly. During 1922, however, owing to the coal miners' strike, many of its cars were diverted from their usual

channels and moved to western territory. This resulted in a considerable shortage. No coal is stored by this company.

The *Western Maryland* obtains its coal under yearly contracts from four or five mines having a total capacity of about 50 cars per day. These mines are located on its line or on lines over which it has trackage rights. They produce no commercial coal. This carrier follows the assigned-car practice when it considers this necessary. In October, 1922, it was not securing its fuel coal in assigned cars but did so in 1920. A car shortage developed the first week in November, 1922, and lasted until April, 1923. During this period assigned cars were used to cover the fuel needs of this carrier.

Subsequent to our former hearings in November, 1922, the *Seaboard Air Line* arranged with the St. Louis-San Francisco, Louisville & Nashville, and Birmingham Belt to assign cars for its fuel supply to mines on those roads in the Alabama field. Cars were furnished by the Seaboard under this arrangement. The witness produced by this carrier had no information as to whether the roads to which such cars were delivered placed the cars in excess of the pro rata share of such mines, but stated that since the cars have been furnished by his road to mines on lines of these carriers, an adequate and dependable supply of the proper grade of coal has been secured.

The table in our report is correct in showing that the *Delaware, Lackawanna & Western* did follow the assigned-car practice in 1920 and was not following this practice on October 1, 1922. On the latter date it had a surplus of about 1,700 cars of bituminous coal on line, which, following the coal miners' strike, had been secured principally from England and in part from Nova Scotia and Virginia. This surplus was greatly reduced toward the latter part of 1922, and the carrier then resumed the assigned-car practice. It regarded this as the only practicable means of securing its coal during the car shortage then existing. This carrier's fuel supply of about 100 cars a day is secured from mines on foreign lines in Ohio and Pennsyl-

vania. About 60 per cent. of its supply is secured from output-contract mines on the assigned-car basis and 40 per cent. from partial-output mines without assigned cars.

In our report, page 541, we pointed out that certain important carriers, including the Pennsylvania, New York Central, and Louisville & Nashville, had not presented any statement of the reasons which impelled them to adopt or maintain the assigned-car practice. In their petition for rehearing respondents referred to this statement, and asserted that if we considered the record deficient in this respect, their petition should be granted in order that information might be supplied as to the practice and experience of these railroads. On the further hearing the New York Central and its affiliated company, the Michigan Central, introduced evidence as to the individual situations on their lines. The Pennsylvania and the Louisville & Nashville offered no testimony, but announced that they would rely upon the evidence introduced by respondents in the original hearing. Certain other carriers not shown in the table in our report introduced evidence on further hearing. The individual situations shown will be briefly reviewed.

The *New York Central Railroad* consumes normally 8,000,000 tons of coal per year, 74 per cent. of which is obtained under contracts which call for the total output of the mines for a year, and cover the carrier's minimum requirement of 450 cars per day. These mines are on the assigned-car basis. Among these mines are nine owned by the carrier through a subsidiary company, the Clearfield Coal Corporation. The company mines supply the carrier with about 120 cars of coal a day at a price 7 cents per ton less than that paid to other operators in the same district. Different kinds of coal are used on various divisions of the carrier, and the engines are drafted accordingly. The carrier claims that in time of sustained car shortage it is necessary to use assigned cars to insure delivery of the proper quality of coal. During the winter the carrier's daily consumption of coal reaches a maximum of 600 cars, and the additional coal is purchased from partial-output

mines and obtained without assigned cars. In October, 1923, this carrier had in storage 750,000 tons of coal or about 43.5 days' supply. It customarily carries from six to eight days' supply in cars, some of which is hauled 500 to 600 miles. The witness for this carrier stated that if not permitted to assign cars in case of a sustained car shortage, it would be necessary to increase the supply in cars to from 10 to 12 days, thereby tying up approximately 2,500 additional cars for fuel.

The *Michigan Central* secures about 24 cars per day of its fuel requirements of 140 cars from mines on its line in Michigan. It has two contracts for the total output of mines on foreign lines. Other contracts are made jointly with other subsidiary lines of the New York Central. Its fuel supply in Michigan, as well as at other mines from which it takes a partial output, are secured without the use of assigned cars. Before placing contracts, invitations to bid are sent to between 200 and 300 operators. Contracts are made for the coal year. Under the assigned-car rule, this carrier is able to secure coal from approved mines which guarantee a regular source of supply. From 1912 to 1917 it secured its entire supply without the use of assigned cars. The carrier contends that without assigned cars it would be unsafe to carry less than 10 days' supply under load, while with the assigned car about six days' supply is kept under load.

The *Erie Railroad* consumes approximately 3,800,000 tons of bituminous coal a year. Approximately 54 per cent. is from mines on foreign railroads, and the remainder comes from mines on its own line. Among the latter are 10 mines operated by two companies, the stock of which is owned by the carrier. These 10 mines furnish approximately 40 per cent. of the carriers' total fuel supply, and also ship small quantities commercially. Only a small percentage of the coal produced on the line is commercial coal. This carrier purchases its coal under contracts providing for delivery of a maximum and minimum tonnage, the minimum being 20 per cent. less than the maximum. The carrier obligates

itself to take the minimum, but may take the maximum. In securing its coal the carrier follows the assigned-car practice. A large amount of its coal originates on the Pittsburg & Shawmut and is obtained through brokers. The Erie delivers its cars to that carrier for use by the brokers who designate the mines at which the cars are to be placed on the assigned-car basis. At the time of the hearing in October, 1923; this carrier had stored about 60 days' supply of coal on the ground.

The *Hocking Valley* consumes normally about 25 cars of coal a day, which it secures from three of the 150 to 200 bituminous mines which it serves. One of the three mines furnishes its entire output to the carrier, the other two only part of their output. In making contracts for the output of mines the period provided is not less than six months. The assigned-car practice is followed as to output mines, but not as to partial-output mines. The carrier owns 350 side-dump cars, which are classed by it as work cars, and used exclusively in securing its fuel coal. These cars, with others of the same kind, were formerly used in commercial service. The others, however, were converted in 1918 into solid-bottom cars to make them more suitable for commercial use. The carrier's coaling stations have been constructed for the use of side-dump cars, and are not suitable for the use of cars of other types. The 350 side-dump work cars are used at both the total-output mines and the partial-output mines. However, they are not placed in excess of the distributive share of the partial-output mines. From 60 to 70 cars of locomotive fuel are ordinarily carried at the fuel stations each day. About 50,000 tons of coal were stored on the ground between February and July of 1923. Some of this coal had to be removed because of spontaneous combustion.

The *Chicago, Rock Island & Pacific system* consumes about 3,500,000 tons of coal per year. About 40 per cent. of this coal is secured from 15 of the 72 mines on its line. The remaining 60 per cent. is secured from mines in Illinois on the Chicago & Alton, the Chicago, Illinois & Midland,

and the Louisville & Nashville; from mines in Colorado on the Colorado & Southern and Denver & Rio Grande, and from mines in New Mexico on the El Paso & Southwestern. This coal is used as nearly as possible to point of production. The carrier sends cars under special assignment to the mines on foreign lines, except to those in Colorado and New Mexico, where 50 per cent. of the car requirements are furnished. This, however, is under an agreement between the railroads, and includes cars for commercial loading as well as cars for railroad fuel. The carrier follows the assigned-car practice as to mines on its own line, including four or five mines it owns in Oklahoma, which supply about 50 per cent. of its fuel coal. They also engage in commercial business. This is true of other mines on its line furnishing it with coal. The witness produced by this company was not informed as to whether cars were placed for its fuel loading at mines on foreign lines in excess of their pro rata share of cars.

In our former report, at page 541, we described briefly the practices of the *Chicago, Burlington & Quincy* with respect to its fuel supply. The capacity of the mine which it owns in southern Illinois has since been increased from between 4,200 and 4,500 tons to between 5,500 and 6,000 tons per day, and is expected ultimately to reach a capacity of 7,000 tons per day. From January to July, 1923, the lowest price which the carrier paid for coal from mines other than its own mine was $2.96 per ton in May, and the highest was $3.19 per ton in January. The prices thus paid were approximately 40 cents per ton higher than the cost of coal from its own mine. This mine is owned through a subsidiary company. The authorities of Illinois authorized such ownership as in the public interest provided that the price paid by the carrier for the coal purchased from the coal company should not exceed the cost of production plus interest charges and depreciation and provided that no coal should be supplied to the general commercial trade. The company assigns cars only to its own mine and to a mine whose output is taken by another carrier in cars fur-

nished by the latter. About 7,000 of the 13,500 tons which the Chicago, Burlington & Quincy consumes daily is procured without assigned cars from mines the partial output of which it takes. During slack periods, or when requirements are less, its own mine is closed down because the contract mines meet its requirements. This carrier stores coal, but has found it impracticable to store fine coal. On October 1, 1923, 648,685 tons of coal were in storage at 20 different points. On lines east of the Missouri River, the carrier operates 121 self-firing locomotives which burn fine coal. This kind of coal is most satisfactory from the standpoint of price and helps commercial mines to dispose of a grade for which there is frequently no market. In a number of instances the carrier obtained coal from mines other than its own to improve conditions and realize more freight revenue.

In our original report, page 537, we stated that the *Chicago Great Western* owned a mine on the Illinois Central and had provided itself with hopper-bottom cars which were assigned to the mine to take care of its fuel needs. The controlling interest in this mine was acquired in 1917. The Madison Coal Corporation, a subsidiary of the Illinois Central, operates the mine and furnishes the entire output to the Chicago Great Western for fuel. About 80 per cent. of the carrier's daily consumption of 2,300 tons is obtained in the hopper-bottom cars from this mine on the assigned-car basis. The carrier has 21 modern mechanical coaling stations on its line, for which these cars are especially adapted and at which they can be unloaded at a cost about 14 cents per ton less than the cost of unloading from miscellaneous equipment.

The practices of the *Chesapeake & Ohio* were explained in our report at page 540. Since the original hearing it has reduced the number of cars daily under load with fuel from 1,200 to 700, or approximately 1,300 loaded and empty cars out of an ownership of 40,000 coal cars. This was accomplished by discontinuing the practice of concentrating fuel coal at division points, from which it was re-

handled. It now moves direct to the consuming point. The locomotives of the carrier are designed to use nut and slack coal largely. This represents approximately one-third of a mine's output, lump and egg representing the remainder. The witness produced by this carrier expressed the opinion that preferential contracts calling for nut and slack are not practicable, since lump and egg coal must be produced and shipped at the same time; and that it would not be practicable to supply the kind of coal in the type of car suited for unloading at the various coaling stations if pro rata distribution should be required. During the first six months of 1923, when a car shortage existed, 25,148 cars were supplied for company fuel. The witness testified that if these cars had been distributed with other cars on a pro rata basis the car supply at commercial mines would have been increased 2.2 per cent. From July to September the increase, it was testified, would have been 1 per cent. This carrier will not receive assigned cars from a foreign line unless they are delivered in cuts of 15 cars or more and are for placement at a mine or mines having output contracts with the foreign line for a period of not less than six months. On October 1, 1922, the Atlantic Coast Line, the Richmond, Fredericksburg & Potomac, and the Detroit & Mackinac had contracts for fuel supply with mines on this carrier's rails but cars were not assigned to any of these mines until the latter part of the year, because of the condition of the motive power of the Chesapeake & Ohio. Since that time cars have been assigned for the Atlantic Coast Line and the Detroit & Mackinac, but not for the Richmond, Fredericksburg & Potomac because that carrier has been unable to meet the requirements of the Chesapeake & Ohio.

The *Canadian National,* which includes the Grand Trunk, referred to at page 540 of our report, obtains from 35 to 40 per cent. of the 8,500,000 tons of coal it consumes per year from mines in the United States. About 20 per cent. of the entire supply is from two mines which it owns in Ohio, one on the Pennsylvania and the other on the Balti-

more & Ohio. Both are on the assigned-car basis. The cars are furnished by the Canadian National. These mines were selected because of the quality of coal produced. The carrier obtains approximately 1,000,000 tons of fuel coal per annum in this country, without assigned cars, from various mines from which it purchases part of the output. The assigned-car practice is not followed in securing coal in Canada. The carrier attempts to keep from 60 to 100 days' supply of coal on hand with a larger supply at the lake ports in order to provide for the entire winter. At the time of the last hearing it had from 90 to 100 days' supply at all points.

The Associated Industries of Massachusetts, with a membership of about 1,557 manufacturing industries, appeared in support of the assigned-car rule, and urged that it be left in effect to enable the New England carriers to secure a regular and dependable supply of coal.

On the further hearing, the assigned-car rule was opposed by the International Union, United Mine Workers of America, and by various coal operators' associations, including the National Coal Association, the Central Pennsylvania Coal Producers' Association, Southern Ohio Coal Exchange, Pocahontas Operators' Association, and the Illinois Coal Traffic Bureau. Generally speaking, the opponents of the rule contend that the evidence introduced on further hearing is merely cumulative and that no showing has been made which would warrant us in reversing our decisions in the original case.

Evidence was introduced by some of the opponents of the assigned-car rule to show the discriminatory effect of this rule, the resulting diminution in the percentage allotment at nonassigned-car mines, and the practicability of securing railway fuel of proper quality at reasonable prices without assigning cars under the rule. The National Coal Association introduced in evidence, among other things, a table showing new equipment acquired, condition of old equipment, and railroad-fuel coal stored by railroads of this country, following an efficiency program which was

adopted by railroad executives on April 5, 1923, to enable the carriers better to meet the transportation demands of the country. This table showed railway coal stored on November 1, 1921, to be 11,701,736 tons, on October 1, 1922, 5,423,195 tons, and on October 1, 1923, 17,663,448 tons. This association also introduced evidence showing tonnage of coal moved by representative noncoal-loading carriers, coal cars owned by each, and percentage of cars owned on line, by months, for the years 1920, 1921, and 1922, the percentage being substantially more than 100 per cent. during the car-shortage periods of 1920 and the last half of 1922. The witness for the International Union, United Mine Workers, testified as to the irregularity in working time of miners in various sections of the country during the year 1921, and asserted that, although that was a year of full car supply, the irregularity in working time resulted largely from overdevelopment of the mining industry caused by the assigned car in the past. In addition to testifying as to the adverse effect of the assigned-car rule upon labor, this witness also testified that the use of the assigned car enables the railroad to obtain cheaper fuel at the expense of the public, because with short-car supply at other mines the cost of production is increased, and this increased cost is passed on to the public.

Contention as to our authority.—Our authority over the distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize us to prescribe just and reasonable rules. The provisions of these sections clearly indicate the broad scope of the authority which Congress has conferred upon us, and the important duties with which we are charged, to require, in time of car shortage, a just and equal distribution of cars and the prevention of a distribution which is unjust and discriminatory. *United States* v. *New River Co.*, 265 U. S. 533.

Respondents, however, contend that paragraph (12) of

section 1 shows that we have no jurisdiction over the distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier and coal is not "transported" therefrom. The first sentence of this paragraph is relied upon to support this contention. This sentence reads:

> It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for *transportation* of coal among the coal mines *served* by it, whether located upon its line or lines or customarily dependent upon it for car supply.

The word "served" has no judicially determined or technical meaning which would make it inapplicable to carrier-owned or output-contract mines. We must, therefore, give this word its ordinary meaning. The Standard Dictionary defines it, among other things, to mean "to furnish or provide as with a regular supply at stated periods." "Self-service" is a common expression. To use this word, therefore, to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes, is to give the word its ordinary and well-accepted meaning. This is the meaning to which we believe the Congress intended. As used in paragraph (12) "served" is a convenient term to show that the provisions of this paragraph apply not only to mines which are located on a carrier's own line, regardless of the ownership or contractual arrangements of such mines, but also to mines which are located off its line and which it customarily supplies with cars.

Respondents also contend that the word "transportation" in paragraph (12) means common-carrier transportation, transportation for compensation, and not transportation of a carrier's own coal over its own line for its own consumption. They cite as authority *Int. Com. Comm.* v. *Balt. & Ohio R. R.*, 225 U. S. 326; *Santa Fe Ry.* v. *Grant Bros.*, 228 U. S. 177; and *The Pipe Line Cases*, 234 U. S. 548.

That "transportation" has not the restricted meaning claimed appears from the use of this word in the second sentence of paragraph (12), which reads:

> * * * During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for *transportation* of coal against the mine. * * *

The counting requirements clearly apply to cars placed by a carrier for its coal at mines on the same date shipping commercial coal, yet this coal is transported by the carrier without compensation. The word "transportation," therefore, as used in paragraph (12) is not limited in its meaning to transportation for compensation, but includes also transportation of the carrier's own coal over its line.

In *Interstate Commerce Commission* v. *Ill. Cent. R. R.*, 215 U. S. 452, 472, the Supreme Court sustained the rule which we laid down in the *Traer case*, 13 I. C. C. 451, that cars for railway fuel should be counted at the mines at which they are placed. The contention[1] there, as stated by the Supreme Court, was:

> When coal is received from the tipple of a coal mine into coal cars by a railway company, and the coal is

[1] The lower court sustained this contention and in doing so said in *C. & A.* v. *I. C. C.*, 173 Fed. 930, 932.

"Coal is brought by complainants from mines along their roads under contracts whereby the coal is delivered to them at the mine tipples. Some is there loaded directly into the tenders of the locomotives. The remainder is taken in cars to the railroads' coal chutes. All is for the complainants' own consumption.

"Commerce in these instances ends at the tipples. From there on, whether the coal goes directly or indirectly to the tenders, there is no consignor, no consignee, no shipper, no common carrier, no freight, no vehicle transporting a commodity in commerce. These cars are withdrawn from complainants' available commercial equipment, just as are flat cars while being used to distribute gravel for ballast. It is erroneous, therefore, to require complainants, in distributing available commercial equipment among their shipping patrons, to take account of cars that are being used in hauling their own fuel."

> intended for its own use and is transported by it, it is said there is no consignor, no consignee and no freight to be paid, and therefore, although there may be transportation, there is no shipment, and hence no commerce.

The Supreme Court in overruling this contention said, at page 474:

> It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

Thus the court held that we had jurisdiction over cars used for hauling railway fuel over a carrier's own line, on the theory that such cars were instrumentalities of interstate commerce and could be regulated with a view to bringing about a just and equal distribution and preventing an unjust and discriminatory one. Whether the cars were used in common-carrier transportation was immaterial. The cases relied upon by respondents, namely, the *B. & O. Case,* the *Grant Bros. case* and *The Pipe Line cases, supra,* relate to what is common carriage and are, therefore, not in point. As to foreign-line fuel cars we call attention to the following in our original report, p. 546:

> When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. *Rates on Railroad Fuel and Other Coal,* 36 I. C. C. 1, 9, *Divisions of Joint Rates on Railway Fuel Coal,* 37 I. C. C. 265.

See also *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 326.

In view of the conclusion which we have reached as to the meaning of the words "served" and "transportation" in paragraph (12), we are of the opinion that its provisions apply to cars placed at carrier-owned and output-contract mines and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules. On oral argument counsel for respondents expressed the opinion that we could restrict the assigned-car practice to mines furnishing their output to a carrier for periods of at least six months. They thus apparently admit that mines selling their output to railroads for shorter periods are "served" and the coal hauled in the assigned cars is "transported" within the meaning of the act.

Respondents contend that an assigned-car mine furnishing all of its coal to a railroad for a long period of time is not in competition during such period with unassigned-car mines selling coal to others, and that in the absence of competition we have no authority to make a finding of undue prejudice or unjust discrimination under section 3 of the act. The period which respondents assume, as we previously pointed out, is at least six months. If the period be less, apparently they recognize that competition may exist.

In the *Illinois Central case*, our authority under section 3 was in issue, and the court sustained our finding of unjust discrimination. Cars were required to be counted although the coal in them belonged to the carrier and was transported by it without compensation for its own use. While respondents attempt to distinguish that case on the ground that, as they contend, only partial-output mines furnishing railway fuel were there dealt with, the principle there established is broad enough to cover this case.

Assigned-car mines which furnish their output for long periods of time to railroads are, at the end of such periods,

because of lower costs and better labor conditions which they have enjoyed, in a position to undersell competing unassigned-car mines. The record also shows that railroad-owned mines in many instances sell coal commercially. Such mines may not only at any time dispose of part or all of their product commercially, but may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, while we do not consider this circumstance essential to our decision in this case, the record clearly shows that there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. We think upon the facts shown of record that we have jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act. Competition is not an essential element under section 1. *Penn Tobacco Co.* v. *Old Dominion S. S. Co.*, 18 I. C. C. 197, 200.

Respondents contend that the evidence fails to show that the assigned-car rule is unreasonable under section 1 of the act; that a finding, if any, abolishing the assigned-car practice must rest on section 3; that the *Traer case* decision was made under that section; and that there has been no showing in this proceeding that justifies us in abolishing the rule laid down in that case.

In making this contention respondents, we believe, overlook the broad provisions of section 1 as to reasonable rules. Moreover, they fail to realize that to abolish the assigned-car rule is not to depart from the principle laid down in the *Traer case*, but to carry out that principle by preventing altogether the discriminatory practice which was there only partially restricted. We showed in our report, page 553, that "The circumstances surrounding and subsequent to our decisions in the *Traer case* and *Hocking Valley case* are such that the practice based upon the rules there announced can scarcely be given the sanctity of long observance in considering the question of reasonableness or undue preference."

Effect of assigned-car rule.—In passing upon the rule before us, it is important to bear in mind the fundamental purpose of the act "to compel the carrier as a public agent

to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." *New Haven R. R.* v. *Interstate Com. Com.*, 200 U. S. 361; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *United States* v. *Union* Stock Yard, 226 U. S. 286. We have already noted the Supreme Court's language in the *Illinois Central case* as to our power to require "a just and equal distribution and the prevention of an unjust and discriminatory one." The court also refers in that case to the carrier's "duty to make equal distribution of cars," page 477, and "the duty of equality of treatment," page 473. In *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, 88, which related to assigned foreign railway fuel cars and private cars, we said:

> There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are disposed to and do actually favor some shippers at the expense of others. * * * The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rates but an impartial enjoyment of the facilities and services of interstate carriers.

One effect of the assigned-car rule, as we pointed out in our original report, pages 542 to 546, is to diminish the supply of cars at commercial mines. The extent of the diminution in car supply, as we also pointed out, is in dispute and is difficult to state in mathematical terms. Counsel representing the American Railway Association contend that, while on the whole it seems difficult, if not impossible,

to name an exact figure which will represent the percentage of increase in the supply of cars to commercial mines which would be brought about by the abolition of the assigned-car privilege, 3 per cent. would be more nearly a correct figure than any other which could be named. Opponents of the assigned-car rule on further hearing introduced further evidence on this phase of the case. This showed, among other things, that, if there had been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania, which include that portion of the railroad from Cresline, Ohio, east to New York, the supply of commercial mines for the eight months ended April 30, 1923, would have been increased from 34.23 per cent. to 54.02 per cent. of the commercial cars ordered, or an increase of 57.81 per cent. over the supply received by commercial mines during that period. From September 1 to March 1 during this period, the total number of cars available, assigned and unassigned, decreased from 165,016 the first month to 94,280 the last month, and the percentage of assigned cars available to all cars available increased from 25 to 65 per cent. The orders for commercial cars remained almost constant. The following table shows the situation as to car supply on the Cresson and South Fork divisions of this railroad from October 19, 1922, to April 30, 1923:

	Total required	Cars available		Percentage of cars available to cars required
		Assigned	Unassigned	
Cresson division:	*Cars*	*Cars*	*Cars*	*Per cent.*
Railroad-fuel cars	10,141.2	8,930.0	295.4	91
Private cars	21,257.8	24,447.9	1,092.8	126.1
Commercial cars	141,780.4	[1]3,602.8	38,589.2	29.8
Total	173,179.4	36,980.7	39,977.4	44.4
South Fork district:				
Railroad-fuel cars	15,119.1	11,955.5	510.2	82.5
Private cars	30,297.6	36,023.0	242.4	119.7
Commercial cars	87,117.9	[1]3,286.9	23,778.7	31.1
Total	132,534.6	51,265.4	24,531.3	57.2

[1] Includes cars not assigned for railroad fuel but for other reasons not counted against the distributive share of the mines.

It will be observed that if there had been a pro rata distribution of all cars, assigned and unassigned, the commercial supply on the Cresson division would have been increased from 29.8 per cent. to 44.4 per cent., or an increase of 49 per cent., and on the South Fork district from 31.1 per cent. to 57.2 per cent., or an increase of 83.9 per cent.

The supply of assigned and unassigned cars in the various districts of the Chesapeake & Ohio during the first three months of 1923 is shown in the following table:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percentage	Ordered	Furnished	Percentage
New River	94,366.9	27,471.8	29.1	5,989.5	5,494.7	91.7
Kanawha	67,619.4	20,282.3	30.0	3,394.6	3,068.6	90.4
Coal River	37,840.1	11,041.7	29.2	2,911.6	2,212.6	76.0
Logan	117,965.2	37,823.1	32.1	16,345.5	14,546.0	89.0
Kentucky	47,381.6	14,067.1	29.7	6,603.0	5,596.5	84.8
Total	365,173.2	110,686.0	30.3	35,244.2	30,918.4	87.7

District	Total			Percentage increase[1]
	Ordered	Furnished	Percentage	
New River	103,356.4	32,966.5	32.8	12.7
Kanawha	71,014.0	23,350.9	32.8	9.7
Coal River	40,751.7	13,254.3	32.5	11.3
Logan	134,310.7	52,369.1	39.0	21.5
Kentucky	53,984.6	19,663.6	36.4	22.6
Total	400,417.4	141,604.4	35.4	16.8

[1] Last column shows percentage increase in commercial supply if all cars are distributed pro rata.

The evidence does not show the various classes of assigned cars, except that as to the Logan district it shows the 16,345.5 assigned cars ordered included 9,954.4 cars for Chesapeake & Ohio fuel coal and the 14,546 assigned cars furnished included 9,286.4 cars for Chesapeake & Ohio fuel coal.

The supply of cars, assigned and unassigned, in the Corning, Drakes, Fultonham, and Kanawha & Michigan districts

on the Ohio Central lines of the New York Central Railroad for the first three months of 1923, is shown as follows:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percentage	Ordered	Furnished	Percentage
Kanawha & Michigan	65,635	17,019	25.9	6,029	3,436	57
Drakes	10,513	2,775	26.4	257	140	54.5
Corning	28,172	8,479	30.1	10,620	7,709	72.6
Fultonham	5,715	1,660	29.1	4,633	3,907	84.4
Total	110,035	29,933	27.2	21,542	15,192	70.5

District	Total			Percentage increase[1]
	Ordered	Furnished	Percentage	
Kanawha & Michigan	71,664	20,455	28.5	10
Drakes	10,770	2,915	27.1	3
Corning	38,792	16,188	41.7	38.5
Fultonham	10,348	5,567	53.8	85
Total	131,577	45,125	34.3	26

[1] The figures in the last column show the percentage increase in car supply which commercial mines would have received if there had been a pro rata distribution of all cars.

After weighing the evidence in the light of the various contentions made on this phase of the case, we think our former conclusion that the supply of cars at commerical mines would be increased by abolishing the assigned-car rule is fully warranted. This effect not only clearly appears from the evidence, but also the gross inequality of treatment as between assigned-car mines on the one hand and unassigned-car mines on the other. As we pointed out in our original report, page 550, the result of inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production, and the amount of such increased cost is considerable and important. We think it unnecessary to add to what we said in our original report, page 550, as to the effect of the assigned-car practice, in attracting as many desirable miners as can be given employ-

ment to the assigned-car mine and away from commercial mines, and in bringing about a more rapid labor turnover at the latter than at the former.

In our original report, page 547, we pointed out that the record indicated that upon the whole the wastage during periods of car shortage, which results from the holding over from one day to the next of cars set for loading, is somewhat greater at mines which use the railroad or private assigned car than at commercial mines. We see nothing in the evidence on further hearing to change our finding on this point.

Contentions as to necessity of assigned fuel cars.— Respondents contend that the assigned-car rule as advocated by them is reasonable and not unjustly discriminatory because under it they are able to secure a regular supply of coal of proper quality at reasonable prices during car-shortage periods while without it they would not be able to do so. Before reviewing the large volume of evidence on this feature of the case it is important to bear in mind that the fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because the carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore the remainder. In *United States* v. *Ill. Cent. R. R. Co.*, 263 U. S. 515, the court said, page 523:

> The effort of a carrier to obtain more business, and to retain that which it had secured, proceeds from the motive of self-interest which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carrier's motives in granting them are honest. *Interstate Commerce Commission* v. *Chicago Great Western Ry.*, 209 U. S. 108, 122. Self-interest of the carrier may not override the requirement of equality in rates. * * *

That was a rate case, but the principle is applicable in a car-distribution case, that a carrier's self-interest may not override the requirement of equality in car distribution. See also *Int. Com. Comm.* v. *Balt. & Ohio R. R.*, 225 U. S. 326.

Much of the argument as to economy of operation resolves itself into the proposition that a carrier is able to secure cheaper coal as the result of discriminating in its own favor through the use of the assigned car. As to this it is appropriate to repeat what we said in our report of January 25, 1907, to Congress on "Discriminations and Monopolies in Coal and Oil":

> * * * The prevailing rule is that cars in which fuel coal was loaded were not counted against the percentage of cars allotted to the operator furnishing such coal, but that fuel coal cars were arbitrarily allotted to the operators furnishing such coal over and above their percentage allotment.
>
> The reason advanced by the officers of the railroad for this was that it enabled them to get cheaper fuel, in that an operator loading fuel coal would get the cars necessary to carry the same over and above the percentage he was entitled to under the system of car distribution in effect, and that he would therefore be willing to make a low price on fuel coal in order to keep his colliery running regularly. The result of this was practically a payment by the operator to the railroad company for cars by way of reducing the price of fuel cars, and while the profit of the operator on fuel coal may not be large, it enabled him to keep his miners regularly employed and his plant in operation and gave him an advantage over a competitor who has no order for fuel coal.

While, as we pointed out in our original report, there was lack of evidence to show that railroads had used the assigned-car rule to coerce mine operators into selling their coal at unreasonably low prices, the evidence introduced

at the original hearing and upon the further hearing shows that the carriers are able in consideration of furnishing a full supply of cars under this rule to make contracts for coal at somewhat lower prices than they could otherwise make.

Respondents contend that the table in our report of 52 carriers not using assigned cars does not, when considered in view of the evidence which they presented, justify the inference that carriers can secure their coal at reasonable prices during periods of car shortage without the use of the assigned car. However, as to the eight carriers, whose practices were shown on the further hearing, the evidence shows certain significant facts. The Great Northern and Chicago & North Western did not resort to the assigned-car practice in securing their fuel. The St. Louis-San Francisco in securing approximately 73 per cent. of its coal from mines on its own line did not follow this practice, and followed it only to a limited extent, if at all, in securing the remainder of its coal from mines on other lines. The Atchison, Topeka & Santa Fe secured over one-third of its supply of coal without the use of assigned cars. The Caroline, Clinchfield & Ohio did not follow this practice in 1920 or in October, 1922, although it did do so the latter part of that year. During 1920 and until the latter part of 1922 the Seaboard Air Line obtained practically all of its coal without assigned cars. The Delaware, Lackawanna & Western obtained 40 per cent. of its coal in this manner. Our table shows that the Atlantic Coast Line and the Detroit & Mackinac did not follow the assigned-car practice in 1920 and were not following the practice on October 1, 1922, and that the Richmond, Fredericksburg & Potomac, while following the practice in 1920, was not using assigned cars on October 1, 1922. This showing remains uncontradicted, except that in the latter part of 1922 the first two carriers secured coal on the Chesapeake & Ohio in cars placed under the assigned-car rule, while the third carrier continued to secure its coal on that road without assigned cars. As to the remainder of the 52 carriers

listed in our table as not using assigned cars, the showing made therein is neither contradicted nor modified. Among these are certain important roads like the Union Pacific, the Buffalo, Rochester & Pittsburgh, and the Mobile & Ohio.

The evidence on further hearing as to carriers other than those shown in our table furnishes in many instances added support for the conclusion that carriers in car-shortage periods may secure their coal at reasonable prices without the use of the assigned car. As illustrative of this, the Chicago, Burlington & Quincy, between the time of the original hearing and the further hearing in this case, secured over half of its coal without the use of assigned cars, during a period of sustained car shortage. This was true also in previous car-shortage periods, as shown at the original hearing. The New York Central secured about 26 per cent. of the coal it consumed without the use of the assigned car. The Pittsburgh & Lake Erie, a part of this system and an important coal-loading carrier, did not follow the assigned-car practice in securing its fuel in the year 1920. The Michigan Central, also a part of the system, secured, since the period of Federal control, a substantial portion of its fuel in Michigan without the use of assigned cars, and from 1912 to 1917 procured all of its coal without assigned cars.

Many large and important carriers in representative sections of the country have secured their coal during periods of car shortage without resorting to the use of assigned cars, and many others have secured large portions of their fuel supply in the same manner. The evidence in the original record and upon the further hearing also shows that public utilities and quasi public utilities have been able to secure their coal without the use of the assigned cars. We pointed this out in our report, pages 552 and 553.

There is a large volume of evidence in the original record and in the record upon the further hearing as to the methods which carriers adopted, and which they could adopt in securing their fuel without the assigned-car rule. These include greater storage of coal during periods of inactive

demand and a wider distribution of fuel contracts among producing mines, with a provision in some cases that railroad coal shall be delivered in preference to coal for other customers. While the carriers contend that these methods are impracticable as substitutes for the assigned-car rule, the experience of carriers and other public utilities and quasi public utilities, which do not depend upon this rule in securing all or a large part of their fuel, and the other evidence in the record on this subject, convince us of the practicability of securing railway fuel at reasonable prices in the absence of the assigned-car rule.

As stated in our original opinion, however, emergencies may arise when for a time a carrier may be unable to secure its coal. But we are not here dealing with the question of car distribution under the emergency provisions of section 1, paragraph (15). In our original report we expressly pointed out that the rule which we prescribed was not to preclude us from authorizing necessary assignment of cars in case of emergency. The question of a just and nondiscriminatory rule under the provisions of section 1 and section 3, with which we are now dealing, is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in paragraph (15), where it is provided that we may suspend car-service rules at such times.

In the petition for rehearing filed by the American Railway Association it was alleged that the abolition of the assigned-car rule would add more than $100,000,000 a year to the operating expenses of the carriers, which must ultimately be met by the public. No figures were offered to show how this sum was computed, and there was a general failure of evidence to support this contention. As we have previously indicated, carriers which have not used the assigned-car rule in securing all of their coal, or a large part thereof, have been able to do so at fair prices. Moreover, as the result of inequality in working time caused by the assigned-car rule the costs of commercial mines are increased and the public in consequence must pay higher

prices for coal. We referred to this in our original report, pages 550 and 551. It seems probable that, as one of the consequences of abolishing the rule, carriers will increase the storage of coal during periods of free car supply and thus not only secure coal at low prices but make more equipment available for revenue service during periods of car shortage. The evidence shows that many carriers, as well as public utilities and important industries, store large quantities of coal and are able to do so at reasonable expense. Storage by railroads and others in periods of car surplus tends to equalize demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal.

It has been suggested in this proceeding that elimination of the assigned-car rule would be an unwarranted interference by us with the carriers' right to purchase coal where and from whom they please. A similar contention was overruled in the *Illinois Central case*, 215 U. S. 452, 477, in which the court said:

> The right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things.

Special types of equipment.—On further hearing, the contention is made that the side-dump cars of the Hocking Valley and the ballast and stock cars of the Atchison, Topeka & Santa Fe are special types of equipment which are used exclusively by these carriers in hauling their coal and can not be used by commercial operators at all, and that we are without authority to deal with such cars for the reason that—

> Cars of this type have never been impressed with the character of common-carrier instrumentalities. They

are not used in commerce at all; they are used only in performing the private work of a railroad company.

The Hocking Valley cars were in commercial service for many years before they were put in fuel-coal service, and they are placed at partial-output mines selling commercial coal and are counted and distributed on a pro rata basis. The Atchison, Topeka & Santa Fe cars are placed at mines of this description and are counted under the assigned-car rule, and such cars may be unloaded by dumping like ordinary coal cars. The side-dump cars and the stock and ballast cars constitute part of the available equipment of these carriers for commercial shipments, and come within the class of equipment as to which Congress requires "a just and equal distribution and the prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474.

It is contended that if the assigned-car rule should be abolished carriers will be deprived of the advantage of using a particular type of cars especially adapted for unloading at coaling stations. Our order, however, does not prohibit such use, but merely placement in excess of the mine's distributive share. The Hocking Valley as we have just pointed out, now uses its side-dump cars in securing coal from partial-output mines on a pro rata basis of distribution.

Railroad-owned mines.—In what we have said we have dealt with railroad-owned mines as well as other mines. We shall here refer briefly to railroad-owned mines alone.

A statement filed by respondents shows 23 railroads owning mines. The ownership in nearly all cases is through subsidiary companies. Eleven[2] of the 23 had mines producing commercial coal as well as fuel coal. Four, the Chicago Great Western, the Chicago, Rock Island & Pacific, the Richmond, Fredericksburg & Potomac, and the Delaware, Lackawanna & Western had mines located on other railroads. Five, the Chicago & North Western, the Great

[2] Atchison, Topeka & Santa Fe, Baltimore & Ohio, Central of Georgia, Chicago, Rock Island & Pacific, Erie, Great Northern, Minneapolis & St. Louis, Missouri Pacific, Northern Pacific, Southern Pacific, and Union Pacific.

Northern, the Minneapolis & St. Louis, the Richmond, Fredericksburg & Potomac, and the Union Pacific are carriers which do not resort to the assigned-car practice. The Canadian National should be added to the four having mines on other lines.

Certain of the carriers owning mines emphasize the importance of having these mines from the standpoint of economy and efficiency. The Chicago, Burlington & Quincy closes down its mine during periods of car surplus, and distributes its purchases among commercial mines to help such mines and thus produce more revenue freight. Moreover, the evidence indicates that in some instances at least, coal can be secured more cheaply from commercial mines than company-owned mines because of the greater distance necessary to haul the coal in the latter case. The Atchison, Topeka & Santa Fe does not consume the output of one of the mines which it owns, because to consume it all would require hauling the coal unreasonable distances. The Chesapeake & Ohio mines are on a branch line. If all the coal this company consumes should be taken from these mines, it would have to be hauled into and through other coal-loading districts on the same railroad.

Private Assigned Cars.

Much of what we have said concerning assigned cars for railway fuel is applicable to private cars.

Nearly all of the private-car owners who filed petitions for rehearing appeared in the original proceeding or had subsidiary or affiliated companies which did. They stated that the evidence which was introduced there did not fully disclose the necessity for the private assigned car in the various classes of industries relying upon it and contended that they should therefore be permitted to make a complete showing on this subject.

On the further hearing much evidence was introduced by such owners as to their individual situations and the economic necessity in each case of the assigned private car. The

widest scope was allowed in the production of testimony as to these individual situations and needs. The names of the companies introducing evidence and the number of cars owned are as follows:

Bethlehem Steel Corporation	3,975	Seaboard By-Product Coke Company	350
Steel Company of Canada and affiliated companies	400	Chicago By-Product Coke Company	650
Carnegie Steel Company and other subsidiaries of United States Steel Corporation	5,200	Rainey-Wood Coke Company	400
Pittsburgh Plate Glass Company	269	Donner Union Coke Corporation	500
Ford Motor Company and subsidiary company	800	Berwind-White Coal Mining Company and subsidiary company	4,078
Youngstown Sheet & Tube Company	1,334	Westmoreland Coal Company	2,019
International Harvester Company and subsidiary	500	Public Service Electric Company	600

These companies owned about 21,000 of the total 29,296 coal and coke cars privately owned as of October 1, 1923.

In addition to the evidence offered by private-car owners, certain public utilities of the city of New York, which received large quantities of coal in private cars owned by others, introduced evidence to show the necessity of the private assigned car. With the exception of the National Coal Association, the same associations which opposed the railway-fuel car opposed the private assigned car and in addition to these there were, among others, the Harlan Coal Operators' Association and the New River Coal Operators' Association.

Contention as to our authority.—Some of the private-car owners content that the interstate commerce act recognizes private cars as legitimate, that the right of the owners to use such cars includes the right to have them placed at designated mines without restriction unless such use of cars result in preferential use of other equipment such as locomotives or tracks, and that we have no authority to abolish the assigned-car rule and require pro rata distribution, because, as they contend, the facts do not warrant us in finding that the use of such cars will result in preferential use of facilities other than cars.

In our original report, pages 554 to 559, we referred to various decisions in respect to private cars, and said:

> Throughout our reports we have held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout we have recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation.

A statement of the general principles which should be applied is also to be found in *United States* v. *Baltimore & Ohio Railroad Co.*, 165 Fed. 113.[3] In that case the Circuit Court of Appeals for the Fourth Circuit in dealing with the distribution of privately owned cars to coal mines called attention to the provisions of section 1 requiring carriers to furnish transportation upon reasonable request and to the definition of "transportation" in section 1 as including cars and other vehicles "irrespective of ownership or of any contract express or implied for the use thereof," and then proceeded as follows, pages 122 and 123:

> In passing upon the questions involved, it should be borne in mind that the statute casts upon the carrier the plain duty of furnishing a fair and equal distribution of facilities to the shipper. The duty thus enjoined

[3] The case was later reversed by the Supreme Court in *Baltimore & Ohio R. Co.* v. *Pitcairn*, 215 U. S. 481, but on the ground alone that the lower court had no jurisdiction to pass upon the reasonableness of car-distribution rules, since the question was an administrative one for the commission.

cannot be evaded by the carrier by claiming that it is not the owner of the portion of the cars carried over its lines. The duty of furnishing equal facilities relates to and involves purely the question of transportation, and when we are called upon to determine as to whether in any particular instance there has been an undue and unreasonable discrimination or preference as contemplated by the statute, the sole question is as to whether the entire equipment operated over the lines of the carrier has been fairly and equally distributed among all the shippers along its lines who are similarly situated. The defendant mine owners insist that in the purchase of individual cars they have expended a considerable sum of money, which thereby becomes a part of their investment and should be treated as such, and that it would be unfair to them to require the carrier to charge such cars as a part of the percentage to which they are entitled. This is a matter which we cannot consider, inasmuch as the statute was not enacted for the purpose of promoting the interests of any particular mine owner; it being limited to one purpose, to wit, the fair and equal distribution of car service by railroads or transportation companies among all mine owners similarly situated within the territory in which their lines are operated.

It is made the duty of the carrier to move the product of the shipper, and in doing so, if the carrier should by any means deny to a particular shipper his just and proportionate share of facilities as compared with other shippers similarly situated, then, in that event, the shipper would undoubtedly be entitled to the relief accorded by section 23 of the act. If, as in this instance, a carrier, by contractual arrangement, operates individual cars belonging to mine owners as a part of its equipment, such arrangement cannot in the slightest degree relieve the carrier of the duty to furnish equal facilities to all shippers similarly situated. To adopt any other rule would be to make it possible for

wealthy mine owners, by the purchase of car equipment, to utilize the means of transportation operated by the carrier to such an extent as to practically deprive other mine owners similarly situated of any means of transportation, and it was to avoid this very kind of discrimination that the provisions of sections 1 and 3 of the interstate commerce act were enacted. There is nothing in the interstate commerce act which prohibits a carrier from making any arrangement it may choose as respects the ownership of cars which it operates on its lines. That is a matter which it left entirely with the carrier; but, while such is the case, it is equally true that the carrier cannot, by any such arrangement, by indirection, accomplish that which is prohibited by the statute.

The private-car owners concede that the assigned-car rule established by the *Hocking Valley case* and *Tracy* case is reasonable and lawful. In one of the briefs in behalf of many of such owners, it is stated that this rule "has the approval of the Supreme Court of the United States. *Int. Com. Comm.* v. *I. C. R. R. Co.*, 215 U. S. 452." While the court in that case did not expressly pass upon the rule in so far as private cars were concerned, it may be considered as authority for the proposition that we have power to make such a rule. The lower court in *Chicago & Alton R. Co.* v. *Int. Com. Comm.*, 173 Fed. 930, in sustaining the rule as to private cars said, page 932:

> A charter duty of railroads is to provide cars, as well as tracks and locomotives. So far as the shipping public is concerned, it is a matter of indifference whether railroads discharge this duty by purchasing or by renting or by borrowing cars. But since no vehicle for transporting commodities in commerce can have any rights upon the tracks of a public carrier except under and by virtue of the carrier's charter, a shipper who is not also a lessor or lender of cars is interested in seeing that the carrier abstains from dis-

> criminations in conditions of service on account of the ultimate ownership of any of the instrumentalities used by it in the transportation of commodities in commerce. A shipper who owns cars is not entitled on that account, or on any account, to a preference in rates or in promptness of service. If his cars are used, all that he is entitled to is to be paid the just value of the use, whether measured by mileage or otherwise. If he has a contract with the carrier that calls for more, that contract is pro tanto void. In our judgment, therefore, the so-called private cars, if accepted by an interstate carirer for use by it in transporting a commodity in commerce, must be treated as constituting a part of the carrier's available commercial equipment.

The fundamental principle which has governed us in dealing with private cars is that such cars, being paid for by the carriers through allowances to their owners, are to be treated as part of the carrier's equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Prior to the *Hocking Valley* and *Tracr* decisions private cars were not taken into account at the mines to which they were assigned. Such mines received in addition their full pro rata share of system cars in the same manner and to the same extent as if the private cars were nonexistent. By these decisions, however, private-car owners who did not have sufficient private cars for placement at their mines to exceed the distributive share of such mines were deprived of the advantage of ownership of the cars just as private-car owners claim here that they would be deprived of the advantage from the ownership of their cars if the assigned-car rule should be abolished and the placement in excess of the distributive share of the mines be prohibited. The interstate commerce act not only confers authority upon us to restrict the preferential use of private cars as was done in those decisions, but authorizes us to prohibit altogether such preferential use. *United States* v. *New River Company, supra,* and

cases therein cited. As we pointed out in our original report, page 561:

> A private-car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable.

The contention is made that paragraph (12) of section 1, which was incorporated into the interstate commerce act by transportation act, 1920, limits our power to change or extend by further limitation the rule laid down in the *Tracy case* and *Hocking Valley case*. That this was not the intent of Congress, we think, is clear. In this connection, it is to be observed that the Supreme Court in *United States* v. *Pennsylvania R. R. Co.*, decided November 17, 1924, used the following language:

> * * * There is nothing in the Act to Regulate Commerce as originally enacted, or in Transportation Act, 1920, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by the use of facilities possessed, or to narrow the Commission's powers to prevent unjust discrimination. * * *.

Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within the broad powers conferred upon us by the statute to prevent unjust discrimination.

As to the contention of private-car owners that they are entitled to unrestricted use of their cars unless this involves some preferential use of facilities other than cars, we may repeat here what we said in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92:

> The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to

have his private car attached to a locomotive in preference to a system car loaded by another shipper. The ownership of a private coal car or the possession of a foreign railway fuel car can give to an operator no preferred right to have it occupy a carrier's sidings or other tracks as against a system car loaded by another coal operator, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines. And this shortage in other facilities which, as heretofore stated, rarely, if ever, fails to accompany a shortage in cars, has an important bearing upon the matter of the distribution of cars, and underlies what the Commission has said on those questions in its formal decisions.

In the report of the American Railway Association conference committee to the United States Coal Commission dated June 1, 1923, which is in the record, the following appears:

> "Coal Car Shortage," while a term generally used, is commonly a misnomer; "Transportation Shortage" would be more exact or more properly descriptive. From the viewpoint of the mine management a "car shortage" exists when cars are not placed on mine tracks in sufficient quantity to fill car orders. From the viewpoint of the railroad management the situation may rather be considered a "Transportation Shortage," for at such a time there may exist no "car shortage" on the railroad as a whole. That is, even though all car orders are not filled there may be in the road's possession as many coal cars in the aggregate as in previous periods when the mines it served loaded a greater amount of coal and the needs of such mines for cars were more adequately or fully met.

> When labor disturbances cause abnormal demands for coal to be delivered in certain sections of the country within a certain period, the coal moves to met these demands via routes and gateways in quantities far above the normal, or average, movement through such channels and also via unusual routes. Because of this abnormal coal movement, yard tracks, main tracks, terminals, lake and tidewater piers and various other facilities become overtaxed or congested, with a consequent slower movement and longer turnaround of cars. This results in what the mine management terms a "car shortage."

As we pointed out in the *Rail and River case*, "A shortage in cars usually if not invariably is accompanied by a shortage in some one or more of the other facilities of the carrier." Locomotives, tracks, employees, terminal facilities, etc., are so related to the number of cars in service that an excessive demand for cars places an excessive burden upon such other facilities. Some of the more aggravated cases of discrimination shown under the assigned-car rule were during car shortages resulting in part at least from lack of motive power and limited track facilities. Some of these cases were cited by private-car owners as examples of the necessity of the assigned car. As illustrative of this, the United States Steel Corporation, International Harvester Company, Chicago By-Product Company, and Ford Motor Company, through subsidiary companies, operate large mines in the Harlan district of the Louisville & Nashville in Kentucky, and severally own about 4,000 private cars used in serving their respective mines. The evidence shows that this carrier was unable, because of limited track facilities among other things, to handle all the cars required by the mines in this district, and yet private-car mines received practically full car supply while other mines in the district received less than a 30 per cent. supply for substantial periods. Other divisions of the same railroad not only had a larger percentage of cars than the

Harlan district, but at times during the car shortage it was shown that this carrier notified connections not to deliver empty cars to it.

In determining upon a just and workable rule, we must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with the fundamental requirements of the act.

Contention as to necessity of private assigned cars.—As we have indicated, much evidence was introduced by private-car owners to establish the necessity of the use of private cars under the assigned-car rule. Much emphasis was laid upon the technical processes involved in the making of by-product coke and the necessity of having a regular supply of coal of proper quality for coking purposes. The principal witness on this subject was the president of the Seaboard By-Product Coke Company and the Chicago By-Product Coke Company. The situation as to the former is typical and will be briefly summarized:

The Seaboard By-Product Coke Company operates 165 by-product coke ovens at its plant in Kearney, N. J., in which it uses about a million tons of coal a year in producing about 750,000 tons of coke. In this process gas and other by-products of the coal are recovered. The gas is supplied to a public-service gas company. Of the coke 60 per cent. is sold to public utilities for the manufacture of water gas and the remainder is sold to industrial and domestic customers. The by-product company is under contract to furnish daily a fixed amount of gas to the gas company, which under its franchise must supply gas to the public. Continuous operation of the by-product plant is necessary in order to supply the gas contracted for

and to furnish a regular supply of coke to gas companies for the manufacture of water gas. By-product ovens are lined with specially molded silica brick, and require a gradual heating of from six to eight weeks to put them in blast. Rapid heating will expand the oven walls, destroy them, and require rebuilding at substantially replacement cost and with long delay. Sudden shutdowns will likewise wreck the ovens. The witness estimated the cost of replacement to be from $300,000 to $500,000, depending upon the size of the plant. It is important to have a continuous supply of uniform grades of freshly mined coal from selected mines in order to comply with specifications as to gas and to produce coke suitable for water gas manufacture and for the metallurgical and domestic trade. Unknown and varying coals will cause serious injury to the ovens by reason of expansion or crumbling during the coking process. Determination of correct mixtures of coal is a delicate operation, requiring much time and many tests in test batteries of ovens. The company ordinarily keeps in storage about two months supply of coal to guard against a breakdown in transportation or trouble at the mines. Such coal must be mixed with freshly mined coal to produce satisfactory results.

In 1919 and 1920 the Seaboard By-Product Company was unable, because of car shortages then existing, to secure suitable coal under contracts which it had. Additional coal was purchased to keep its plant in operation, but this was of poor quality and resulted in bad coke. In 1920 the company acquired 350 cars, and has been able to have these cars assigned and has thus secured suitable coal and operated its plant satisfactorily during car-shortage periods.

In the last 10 years over $200,000,000 has been invested in by-product coke plants and their accessories, and a tremendous saving in natural resources has resulted from the use of this process. The by-products thus saved are estimated to be worth about $4 for each ton of coal coked.

The steel companies also emphasized the necessity of private assigned cars in securing coal of proper quality for

the by-product coke plants which they operate in connection with the manufacture of steel. Large quantities of gas are supplied by such companies to public utilities. It is important in producing steel to have coke made from coal of proper physical structure and metallurgical content. Sulphur and phosphorus in the coal used for coking will continue throughout the process and impair the quality of the finished steel. Many of these companies own outright or through their subsidiary companies mines selected because of the suitability of the coal produced for steel making and use their private cars for transportation of the coal from their mines to their own plants. Some of such mines ship only to the industries which own them. When coal can be obtained and stored the steel companies generally carry a sufficient supply in stock to take care of their requirements during any ordinary period of irregular coal supply or interrupted tansportation service.

The Berwind-White Coal Mining Company and its subsidiary, the New River & Pocahontas Consolidated Coal Company, own 4,078 private cars which are used in transporting coal from mines which the former company owns on the Pennsylvania and from mines which the latter company owns on the Chesapeake & Ohio. The subsidiary company also owns mines located on the Norfolk & Western. These companies supply large quantities of coal to railroads and public utilities and to steamship companies for bunker coal. They have owned the cars for many years, and contend that such cars under the assigned-car rule are a necessity in order to insure regular delivery to their customers.

Evidence of similar character was introduced by other private-car owners. While all of them contend that private assigned cars are necessary in their industries and in some cases allege that disaster will result if they are deprived of the assigned-car privilege, the record shows that many of such owners secure large quantities of coal without the assigned car. As illustrative of this, the Carnegie Steel Corporation and other subsidiaries of the United States Steel Corporation normally receive by rail 20,000,000 tons

of coal annually, one-half of which is used in their mills for producing gas and steam and one-half in their by-product coke ovens. These companies own 5,200 coal cars. Of the 20,000,000 tons 5,000,000 are moved in these cars. About 12.5 per cent. of the 10,000,000 tons of coal for gas and steam and about 37.5 per cent. of the 10,000,000 tons used for by-product coke are moved in this manner. Another illustration is to be found in the Pittsburgh Plate Glass Company, which owns about 269 cars and uses them in securing coal for its plants in the Pittsburgh district, but obtains coal in system cars for its other plants in Indiana, Ohio, and Missouri. The Youngstown Sheet & Tube Company obtains 49 per cent. of its coal in system cars. This includes both high-volatile and low-volatile coking coal. The New York Edison Company and the Consolidated Gas Company of New York each receives about two-thirds of its coal in system cars. Large quantities of coal are secured by private-car owners from mines on the Norfolk & Western, which does not handle private coal cars during car-shortage periods or at any other time. The evidence presented showed that many public utilities, including street railways, obtained their coal without private cars. It further shows that many mines in the districts where private cars are used produced coal for by-product coke, bunker coal, and other kinds of coal in competition with that moved in private cars.

It is to be observed that many of the private-car owners appearing in this case did not purchase cars until the abnormal period following the termination of Federal control of railroads. The following companies, for example, first acquired their cars in 1920: Steel Company of Canada and affiliated companies, International Harvester Company and its subsidiary company, Bethlehem Steel Company, Youngstown Sheet & Tube Company, and Seaboard By-Product Coke Company. The Pennsylvania Coal & Coke Company acquired its 1,000 cars between the time of the original hearing in this case and the future hearing. The president of this company at the original hearing opposed the use of private cars. 1,004 cars of the Ford Motor

Company and its subsidiaries were also acquired subsequent to our original hearing in this case.

Many of the private-car owners deal with the contention of opponents of the private car that mines supplied with private cars have better working time than unassigned-car mines, by saying in a brief which they filed:

> Only in a car shortage period, however, can the ownership of private cars be a matter of moment, for at all other times all mines are supplied in full of all car requirements. While it is a fact that since 1916 coal car shortages have been common, that is not the normal situation. Once we are out of our war and *post* war difficulties, the opposite condition, one of coal car surplus, may be more regularly contemplated.

This statement is justified by the record.

The fundamental problem is to determine whether differences in transportation conditions justify the inequality of treatment resulting from the assigned-car rule. The evidence which has been presented as to the economic necessity of individual shippers or classes of shippers does not, we think, warrant us in concluding that this inequality of treatment is justified under the provisions of section 1 and 3 of the act. Compare *Rates and Charges on Grain and Grain Products*, 91 I. C. C. 105. In case of emergency we may grant relief under the provisions of paragraph (15), section 1. What is reasonable action under that section, however, as we pointed out in our discussion of fuel cars, is a different question from the one presented here.

Extent of discrimination.—We have already dealt generally with the discriminatory effect of the assigned-car rule as applied to both fuel cars and private cars. Opponents of this rule introduced evidence to show the adverse effect of the rule in respect to private cars, particularly on the Louisville & Nashville, the Chesapeake & Ohio, and the Pennsylvania. It was shown that during car-shortage periods private-car mines received practically a full car sup-

ply, while other mines on the same division of the same railroad received a comparatively small percentage of the cars ordered. Private-car owners themselves, in introducing evidence as to the necessity of the assigned-car privilege, showed in many instances the discriminatory effect of the rule. During car-shortage periods mines at which their cars were placed were able because of better car supply under the assigned-car rule to operate more regularly, at less expense, and with more efficient labor organization than such mines were able to operate with system cars only and than other mines similarly situated on the same railroads and depending entirely upon system cars were able to operate. As illustrative of this, the Fordson Coal Company, a subsidiary of the Ford Motor Company, had a car supply of approximately 22 per cent. at its mine on the Louisville & Nashville for the six months' period prior to the first placement of its private cars at its mine in February, 1923, and was able to produce only about 34,000 tons of coal a month, while in March with practically a full supply of private cars it was able to produce about 72,000 tons, although the car shortage continued. The costs per ton were reduced from about $4 in November, 1922, and $3 in January, 1923, to $1.93 per ton in March, 1923, and labor at the mine was better satisfied. During the period when the Fordson Coal Company was dependent upon system cars other private-car owners in the same district received practically a full supply of private cars at their mines.

Further evidence of the advantage which private-car owners received from the preferential placement of their cars under the assigned-car rule is to be found in the fact that they were willing to lose many hundred thousands of dollars in the operation of their cars in return for the advantage of such preferential placement during car-shortage periods. The railroads pay to private-car owners an allowance of 1.5 cents per mile for use of their cars. This, it was testified, was hardly sufficient to pay the cost of repairs alone. The Westmoreland Coal Company showed, for example, that for the two years and nine months ending

September 30, 1923, the revenues received for the use of its 2,019 cars were $784,424, expenses for repairs amounted to $820,755, total expenses including interest and depreciation amounted to $1,329,488, and the net loss to the company was $545,064, or a loss per ton of coal handled in private cars of 18 cents in 1921, 13 cents in 1922, and 8 cents in the first nine months of 1923. Private-car owners, it is to be observed, use their cars throughout the year, both in periods of car shortage and in periods of full car supply.

As to the contention that the use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines, "this overlooks the fact," as we pointed out in our original report, "that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply." Furthermore, if private cars should be withdrawn from carrier service and the remaining supply of cars should be inadequate, we have power under the act, as we also pointed out in our report, to require the carriers to furnish an adequate supply.

Contention as to impairment of investment.—Some of the private-car owners contend that they have invested many millions of dollars in reliance upon the rule laid down in the *Hocking Valley case* and *Tracr case,* and that if we should now prohibit placement of such cars in excess of the pro rata allotment of the mines to which they are assigned or consigned, we would take away the only advantage of such cars and in practical effect wipe out the investment which has been made.

In our original report we did not find that the use of private coal cars should be prohibited or that they should not be placed at the mine to which they were consigned. What we did prohibit was the placement of such cars at a mine in excess of the pro rata share of available cars.

Private-car owners were left free to continue to use their cars and to have them so distributed to designated mines as not to exceed the pro rata share of such mines. That large sums may have been invested in reliance upon a rule which is unreasonable and unjustly discriminatory or may become or be found so under the interstate commerce act does not mean that we are powerless to change the rule and prescribe a just and nonpreferential one. *Douglas* v. *C., R. I. & P. Ry. Co.*, 21 I. C. C. 97, 101; *So. Pac. Co.* v. *I. C. C.*, 219 U. S. 433; and *Louisville & Nashville Ry. Co.* v. *Mottley*, 219 U. S. 467.

If we permit the assigned-car rule to continue, it is reasonable to expect that the number of private cars will increase, and, as we said in our original report, page 559:

> The result is not only an increasing gross inequality between users of this form of equipment who are able to afford the very considerable expense in procuring and maintaining such equipment, reflected immediately in the disproportion between the amount of their output or consumption as the case may be, but also that the available facilities of the railroad carrier other than cars—locomotives, tracks and terminals—are taken up in great degree by such classes of preferred users, so that the commercial mines are and will find themselves unable to procure transportation for even the ratable share of the cars which the carrier owns and sets for them.

Upon the facts shown of record we affirm the findings in our former report, 80 I. C. C. 520, and find and conclude that in the distribution of cars for transportation of coal among the bituminous-coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, or whether owned or leased by or furnishing their entire output to a respondent, any rule, regulation, or prac-

tice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading, currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall prevent the assigning of privately owned cars or cars for railway fuel to designated mines, provided such mines are not thereby given more than their pro rata share of available cars. It is also not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

The effective date of our order entered in this proceeding June 13, 1923, has been postponed until January 15, 1925. The statutory period of notice is not less than 30 days. We will enter an order making that order effective on March 1, 1925.

EASTMAN, *Commissioner*, concurring:

I concur in the majority report, except so far as it sustains the conclusion of the original report with respect to the interpretation of paragraph (12) of section 1 of the act. My views with respect to that paragraph were stated in my former separate expression, 80 I. C. C. 520, 563, and to these views I adhere. COMMISSIONER CAMPBELL joints me in this expression.

HALL, *Chairman*, dissenting:

The considerations which prompted my dissenting expression appended to the former report, 80 I. C. C. 520, at 564, are fortified and confirmed by the additional record now before us. I can not escape the conviction that the majority have gone outside of transportation conditions, and thus outside of the proper scope of our powers, to make their findings of unreasonableness and undue prejudice. To my mind these findings are baseless, without warrant in fact or law, and I can not refrain from saying so when, under guise of a decision by this commission, they become armor, shield, and sword for a grave menace to the common welfare. Those who have experience in such matters well know that no workable substitute has yet been devised for the assigned car in supplying carriers with necessary fuel during periods of car shortage, and that if and when those periods come our priority orders must require what is here condemned by the majority as unlawful.

The private car, as my brother Daniels observed in his dissent from the former report, is not an outlaw. It has its uses at all times, and not merely in times of emergency. Under proper regulation, such as we have devised or can devise, it should continue to perform its important func-

tions. The power to tax may be the power to destroy, but that is not true of the power to regulate.

POTTER, *Commissioner*, dissenting:

I am unable to agree with the majority report on further hearing. I set forth my views at some length in my former dissent, and would not find it necessary now to elaborate were it not for the additional facts developed upon the further hearing, which to my mind demonstrate the unsoundness of the majority view.

There are two aspects of this proceeding which were brought into brighter light upon further hearing. One is the propriety and necessity for assigning cars at railway-owned mines or at total-output contract mines located upon the line of the owning or contracting carrier where such contract extends over a considerable period of time. It has been made to appear that to so assign cars is squarely within the intent of Congress in enacting paragraph 12 of section 1 of the interstate commerce act, and in accordance with the view of the commission which recommended the enactment of that section because such assignments were essential and for the express purpose of sanctioning them. The other aspect is presented by the additional testimony as to the importance of the use of the private car as essential to certain lines of industrial development, and particularly to the by-product coking industry and the ramifications thereof. In my original expression I alluded to the effect of the majority report, if not set aside by the courts, upon the steel industry and certain others. The additional testimony upon further hearing demonstrates that the majority report, if given effect, will attack in a most disastrous way a vast and growing industry based upon the by-product coking process, which is perhaps the most glorious achievement of this country along scientific lines.

ASSIGNED CARS FOR RAILWAY FUEL.

Many of the ills with respect to the assigned car for railway fuel arose from the day-to-day assignment or, stated

differently, at mines from which the carriers secure only a part of their fuel requirements. In the original report the majority set forth the rules which the carriers at that time advocated. These rules followed a literal compliance with the rules prescribed by the commission in the *Hocking Valley case* and *Tracr case*, with the added proviso that cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission would be designated as "assigned cars." Under a literal interpretation of our decisions in those cases it would seem that the day-to-day assignment was permissible. In them we stated that where a carrier owned the mine, or contracted to take its entire output, the cars need not be counted. We did not specify the period of time for which such total output was to be taken. Many of the carriers, in apparent compliance with these decisions, took the output of certain mines on a day-to-day basis, and furnished such mines on such days during car-shortage periods cars in excess of the pro rata share to which those mines would have been entitled if shipping wholly commercial coal. The next day or days such mines would again be placed on the commercial basis, but the excess cars placed at the mine on the day on which the railroad took the entire output were not taken into account, that is, there was no equalization effected on the subsequent days when cars were placed for commercial loading. The result was, that such a mine undoubtedly secured a preferential car supply on such days on which it supplied its entire output to the carrier.

The record indicates that some of the operating officials of the carriers did not comprehend what was embraced in the term "assigned car." This was emphasized by an exhibit filed subsequent to the hearing, which is a compilation of replies made by certain of the respondents to an inquiry addressed to them by the car-service division of the American Railway Association. These replies in some instances contradict the oral testimony given by witnesses for the same carriers. This misunderstanding, and the abuses of the rules which followed therefrom, makes it certain that

some uniform rule should be adopted. This is now recognized by the respondents. Upon the further hearing they did not insist upon the right to assign cars at partial-output mines, but insisted upon the right to assign cars at railroad-owned mines, or at those from which they take the entire output over a substantial period of time, thus eliminating those mines entirely as effective competitors of mines shipping coal commercially.

In the original majority report the history of paragraph (12), section 1, of the interstate commerce act is set forth in some detail. From what is there stated it seems clear that what the Congress intended was not to prohibit the assignment of cars at railroad-owned mines or at total-output mines, but that it clearly recognized, as this commission has in numerous decisions, that the carriers were at liberty to place cars at such mines without regard to the distributive share to which those mines would be entitled if shipping coal commercially.

The language of paragraph 12, it seems to me, is clear on this point. It provides that it shall be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. The first question to be determined is whether railroad-owned mines or total-output contract mines are served by the carrier, and therefore whether there is any duty upon the carrier to make just and reasonable distribution of cars for transportation of coal amongst such mines. A railroad sells transportation. That is its function. It does not sell transportation to mines which it owns, or to those from which it has contracted to take the entire output over a long period of time. Webster's Dictionary defines the word "serve" to mean "to work for, to labor in behalf of, to be in the employment of, etc." The first sentence in paragraph 12 relates to carriers which *serve coal mines.* It seems clear that when a carrier places at its own mine, on its own line, or at a mine on its line from which it

purchases the entire output, such coal to be used as company fuel, the railroad does not *serve* the mine. On the other hand, the mine serves the carrier. The seller serves the buyer. The mine sells its services and product, and serves the carrier for compensation. The merchant serves his customers. The gasoline station serves the automobile owner when it place gasoline in the automobile tank. When a railroad sells transportation to a coal producer it serves the latter, but when a coal mine sells coal to a railroad its position is reversed, and the coal mine then serves the railroad. The fact that the railroad supplies some of the instrumentalities for removing its own coal from the mine does not change the relation. If a retail coal dealer sells coal to a householder the relation of buyer and seller is not changed by reason of the fact that the buyer brings his own conveyance and takes the coal home. The difference is merely in the extent of the service rendered by the seller. It seems to follow that when a railroad contracts with a mine to supply it with coal over a substantial period of time, or when the railroad owns the mine which supplies it with fuel coal, the coal mine becomes the servant of the railroad for hire, and the railroad by placing cars, which for the time being are company-service cars, at the mine for loading coal, is serving itself just as much as when it places cars at a coal-stock pile to be loaded by its regular employees.

In both instances the loaders are serving the carrier; in the one case the employee sells his service, in the other he sells his service plus his product. It should be noted here that freight service supplied by a railroad is made up, not only of human labor; it includes coal, oil, or some other fuel which is converted into and supplied in the form of energy so that even when a railroad serves a coal shipper by transporting its product it also supplies coal as well as human labor. The foregoing only applies to owned or long-term contract mines located upon the line of the owning or contracting carrier's line. The needs of the foreign carrier with respect to its fuel supply are, if anything,

more urgent than those of the carrier which has coal mines located upon its line. Any rule, therefore, which is adopted with respect to the assignment of system cars should likewise apply to the asignment of foreign railway fuel cars.

The opinion of the majority relies upon the decision of the Supreme Court of the United States in *Interstate Commerce Commission* v. *Ill. Cent. R. R. Co.*, 215 U. S. 438, as sustaining the position that we have authority to regulate the supply of cars at railway-owned mines or at total-ouput contract mines even where that contract extends over a long period of time, and they quote at some length from the decision of the court to sustain that view. The question before the court in that case, however, was whether we were correct in our finding that fuel cars, both system and foreign, *at partial-output mines*, and private cars, should be counted in the distribution of available cars. The question of assigning cars at railroad-owned mines or at total-output mines was not before the court. That decision seems to hold that under section 1 we have the power to control the facilities of the carrier, even though used for its own private purpose, where necessary, to avoid undue preference and prejudice under section 3. It is conceded in this record that the only prejudice or discrimination as between a railroad-owned mine or a total-output mine and the mine which ships its coal commercially is in the labor market, or, as stated by one of the counsel at the argument, competition in the upkeep of the mine or ability to purchase coal as advantageously as the assigned-car mine produces it, whether it be classified as labor, supplies, or overhead.

In the prior report the majority found that there were more than enough miners to produce coal for all purposes, and that there were more mines than is consistent with the most efficient use of equipment, and that their aggregate capacity exceeded the country's demand.

The mining of coal does not constitute interstate commerce, neither is the hauling of coal or other company

material for its own use common carriage by railroad within the purview of the act.

The question of mine labor necessarily takes into account differences in circumstances arising before the service of the carrier begins, and I am unable to follow the majority that we can take those facts into consideration in determining whether undue preference or undue prejudice exists under section 3. We have the undoubted right, under the interstate commerce act, to control the facilities of the carriers so as to avoid unjust discrimination or undue prejudice as between shippers or receivers of property. We can not, however, regulate the coal industry except as it is incidentally affected by a proper regulation of car supply as a matter of transportation. The railroad-owned mine or the total-output contract mine are operated continuously the greater part of the time whether there is a car surplus or a car shortage. Other mines operate only when they have orders for coal, and in many instances only in periods of peak demand and high prices. It is only natural, therefore, that mines operating practically full time can command the better class of mine labor. It seems to me that if, during periods of car shortage, we were to undertake to regulate the car supply so as to result in equal working time for all mines, we would be going far afield in the regulation of transportation with which we have to deal.

The finding of the majority, as I interpret it, predicates the finding of unreasonableness, unjust discrimination, and undue prejudice chiefly on the ground of the effect which the unequal distribution of cars has on mine labor.

In a series of decisions under Docket 12066, *Construction and Repair of Railway Equipment*, we considered the practice of the carriers in using outside shops in repair and construction work, and found that they made unreasonable and uneconomical expenditures. We censured the carriers for exercising their best judgment in having repairs made at a time when such repairs were necessary at outside shops instead of resorting to their own shops.

The majority opinion in this case, it seems to me, is just the reverse of what the commission found in the case cited. Take the Chesapeake & Ohio as an example. It owns three mines, and employees in those mines are on the Chesapeake & Ohio pay roll, the same as any employees which operate the railroad. We, in effect, are saying to the Chesapeake & Ohio, that "although you can mine your coal cheaper in your own mines than you can secure it from elsewhere during periods of car shortage, nevertheless, you must not place cars at your own mines in excess of the pro rata share, and you must secure your other coal elsewhere at whatever price it is necessary for you to pay therefor."

On page 719 the majority report refers to certain further evidence introduced by opponents of the assigned-car rule on further hearing. The summation of the evidence referred to, which was in the nature of an exhibit filed, shows that had there been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania Railroad the supply to commercial mines for the eight months ended April 30, 1923, would have increased from 34.23 per cent. to 54.02 per cent. of the commercial cars ordered, or an increase of 57.81 per cent. over the supply received by the commercial mines during that period. I think this is an erroneous conclusion to draw from the evidence. The exhibit in question shows, for example, that there were available for the month of September, 1922, more than 17,000 assigned cars in excess of requirements.

It is well known that we were in the throes of a coal strike from the first of April until well along in August, and that the large majority of mines in the central region of the Pennsylvania Railroad were union mines, and therefore closed down during the period of the strike. Many of those mines are owned by private-car interests, and many of the assigned cars available were doubtless private cars being held at the mines of the owners for the resumption of mining operations.

The central region of the Pennsylvania also supplies a large quantity of railway fuel not only for the Pennsyl-

vania Railroad but for other carriers. If the assigned cars had been prohibited at that time, as the majority report now would prohibit them, the private cars, as well as many of the fuel cars, would not have been in that particular region at that time. To say, therefore, that the percentage of cars a commercial mines would have been increased to the extent indicated, is fallacious. The private cars could not be placed by the carrier at mines other than as directed by the owner of such cars. If those cars were eliminated and the railway-fuel cars prorated in the district or division in which they were on the particular dates covered by the exhibit, it may well be that the carrier would then have been guilty of unjust discrimination in the supply of cars as between divisions or districts, which it would have been necessary for it to have equalized later.

PRIVATE CARS.

Prior to our decision in the *Hocking Valley case* the carriers generally followed the practice of not counting private cars in the distribution of cars to coal mines. The mines were given all the private cars, assigned or consigned to them, and in addition their pro rata share of the available carrier equipment. In the *Hocking Valley* case we held that the private cars should be counted and considered in the distribution of equipment; that the owners or receivers of such private cars should be given full and exclusive use of them, but should not be given a division of the system cars except when the supply of the so-called private cars was less than their pro rata share of the total available cars, including system cars, foreign railway-fuel cars and so-called private cars.

In *United States* v. *Baltimore & Ohio R. R. Co.*, 154 Fed. 108, the Circuit Court of the United States for the District of Maryland had before it practically the same issue as before us in the *Hocking Valley case*. In that case a petition for mandamus was filed to require the Baltimore & Ohio Railroad to cease from subjecting the relator and other coal companies on the Monongah division to undue

and unreasonable discrimination in the shipping and transportation of coal. It was a practice of the respondent at that time to place private cars at the mines without taking those cars into account in arriving at the pro rata distribution to which the mine was entitled. In other words, the mine was given all the private cars assigned or consigned to it and in addition its pro rata share of system cars. The court in substance found as we had previously found in the *Hocking Valley case* that the owners of individual cars or those entitled to them by contract were not to be deprived of the exclusive use of such individual cars but that such cars assigned by the owner to be loaded at specified mines should be charged against the specified mine as part of its pro rata distribution of cars. At page 114 the court said:

> It would not be reasonable to hold that the exclusive use of individual cars by the mine operators under a system which has grown up during half a century and under which the trade has enormously developed, and upon the faith of which mine operators have invested millions of capital, often at times when the railroad company had neither money nor credit with which to increase its equipment, is now to be denied unless it could be done upon fair terms mutually acceptable to the mine operators and the railroad. The use of individual coal cars is not peculiar to the Baltimore & Ohio Railroad, but has been quite generally used from the beginning of the coal trade in the United States and in England. While it is true that, if the railroad was so disposed, it might by not keeping up its coal car equipment gradually force all mine operators to provide individual coal cars, which would in the end leave in the business only those operators who were able to obtain and profitably use the large capital required to purchase individual cars, it does not appear that the railroad has pursued that policy. On the contrary, in 1905 it ordered 5,000 new coal cars of large capacity, increasing its total coal car equipment

to about 45,000, and also increased its engine equipment so that it is abundant. Under the present system of individual ownership of coal cars it is not unreasonable that the owner shall have the exclusive use of his individual cars; on the contrary, it is only just. But, under the actual circumstances of the business of the coal trade on the Baltimore & Ohio Railroad, from which it is apparent that the great struggle of the mine operators is to get sufficient cars to ship their product during the winter months, and that their business existence depends upon it, it is not unreasonable to hold that the railroad shall do all that it is practicable to do to avoid subjecting the operators who do not have the use of individual cars to unreasonable disadvantage. While it is true that the existence in the trade of a large number of individual cars does increase the total car equipment, and so far as the individual cars satisfy the requirements of their owners does increase the number of free equipment cars which the railroad has at its disposal, it still is a fact that in times of car shortage the demand is so great that all the mines having individual cars require and get their full percentage of the railroad's equipment without reference to their own cars.

Under the provisions of the interstate commerce act the railroad must abstain from giving any undue or unreasonale preference or advantage to any mine owner in any respect whatsoever. The duty of the railroad under section 1 is to furnish transportation upon reasonable request. It is not the duty of the shipper, but of the railroad, to provide the required vehicles of transportation. If, for convenience or of necessity, the vehicles are furnished by certain of its shippers, and are run regularly on the road just as its own equipment is run, they are, I think, to be treated for some purposes as part of the equipment of the road. These regularly run individual cars occupy the tracks and sidings. They are drawn by the locomotives, and are

operated by the employes of the railroad company, and must lessen the facilities in that respect of the independent operators. Indeed, an objection of the railroad company to individual ownership of cars is that they require special switching and special care to collect and classify them in order to haul them to their respective destinations. As the independent mine operators have in this manner to suffer from individual cars being transported as part of the railroad's equipment in such large and constant numbers running regularly on the railroad's lines, it seems only reasonable that, when distribution upon percentage is made, all this regular equipment then available should be taken into the calculation, and not to first deduct the individual cars and give the independent mine operators only their percentage of the remaining available equipment. This taking of individual cars into calculation would not be depriving the individual car owner of the exclusive use of his cars, and it would not be depriving him of any contractual right which he is entitled to retain and enjoy under the interstate commerce act. The mine operator would in any state of the car supply continue to get the exclusive use of his individual cars as before, but, when the supply was short, he would not get so many of the railroad's general equipment. It would be rectifying an unreasonable disadvantage which has been shown to work a serious hardship upon the relator and the independent mine operators in the Fairmont region.

This case came before the United States Circuit Court of Appeals for the Fourth District on writ of error upon the judgment of the lower court by both the petitioner and respondents. In *U. S.* v. *Baltimore & Ohio R. R. Co.*, 165 Fed. 113, the court affirmed the decision of the lower court on the question of private cars. The case reached the Supreme Court of the United States upon error prosecuted by the Baltimore & Ohio Railroad and the Fairmont

Coal companies, and in *Baltimore & Ohio* v. *Pitcairn Coal Co.*, 215 U. S. 481, the Supreme Court reversed the decision of the lower court in all particulars on the ground that the court was without jurisdiction to pass upon the matters involved until after the commission had been properly afforded an opportunity to exercise its administrative functions. In the majority report reference is made to a statement of the general principles which should be applied as found in the decision of the Circuit Court of Appeals in the case cited, and an extract from that decision appearing on page 122 is quoted. The principles there set forth are in entire accord with what the commission has always held should govern. In fact, the private-car owners are seeking no different principles in this proceeding. They are contending for the right to have the exclusive use of their private cars even though during periods of car shortage the private cars so placed at a mine may exceed the pro rata share to which that mine would be entitled if dependent solely upon system cars. They are seeking this right only in the event that there is a shortage of cars unaccompanied by a shortage of locomotives, track facilities, congestion, or any cause which would tend to interfere with normal operation of the carriers. In the event that by the placement of private cars in excess of the pro rata distribution an undue proportion of the general facilities of the carrier are accorded to the private-car owners and thus denied to users of system cars, the private-car owners are willing to share the disability with all other shippers.

Under the majority decision, however, under a situation such as this the private-car owner would be denied the right to have its cars placed in excess of the pro rata distribution and the cars over and above such pro rata distribution would remain idle; this during a period when there was a general clamoring for coal with the resultant high prices. The majority report also refers to and quotes at length from the decision of the commission in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92. In that case the commission adhered to what it

had previously found in the *Hocking Valley case,* and the paragraph quoted is in entire accord with what the private-car owners are here seeking.

In its report to the Congress on discriminations and monopolies in coal and oil, made in 1907, the commission expressly recommended that—

> After reasonable time, carriers engaged in interstate commerce be prohibited from using "individual" or "private cars" for the handling of coal traffic; and further, that when a carrier is unable to furnish all the cars required by all the shippers upon its line, all cars in service on the road, excepting individual or privately owned cars, until their use is prohibited, be treated as the equipment of the company, and subject to distribution according to the system or plan in effect at that time.

Congress did not take the affirmative action recommended although the commission in many of its annual reports to the Congress embodied recommendations of like effect.

In *Ruttle* v. *Pere Marquette R. R. Co.,* 13 I. C. C. 179, the commission in dealing with the private-car situation, said:

> But while the right to use private cars may doubtless be denied to shippers by appropriate legislation, we are not prepared, in the absence of a specific enactment to that effect, to say that their use is in itself unlawful. Whether under a given set of circumstances their use results in an unlawful advantage to their owners and in an unlawful disadvantage to others is another question, which under existing legislation is clearly under the control of the Commission, and may be made the basis of such relief as the facts in any particular case may justify.

Private cars have been in operation in this country over half a century. The record shows that the Westmoreland

Coal Company has been operating private cars for more than 60 years and the Berwind-White Company for more than 35 years. Under the system of private ownership of coal cars the trade has enormously developed, and dependent upon its continuance these mine operators and others have invested millions of capital, often at times when the railroads had neither money nor credit upon which to increase their equipment.

Under the circumstances it seems clear that it would not be reasonable to hold that the exclusive use of such private cars should be denied, in times of car shortage, even though the private cars so placed at the mine are in excess of the pro rata share of cars currently accorded mines dependent upon system cars. The use of the private car during car-shortage periods increases the supply of system cars available to the operators dependent upon them and is a real benefit.

This naturally leads to the question, what is the material complaint against the use of the private car? Here again the answer is, as in the railroad-owned or total-output contract mine, the labor supply, but as heretofore pointed out, this is a matter which precedes any transportation service which a carrier is called upon to perform, and is not a matter upon which we could predicate a finding of unjust discrimination or undue prejudice. Orders under section 3 are usually in the alternative and give the carrier the option of removing the undue prejudice in one way or another. In the event that the order were made in the alternative in this case, by what means could the carrier comply with our order? It certainly has no control over the mines. It could not direct that the labor supply at certain mines be transferred to other mines so as to enable those mines to operate equal time. The element of taking mine labor into consideration in determining whether or not discrimination or undue prejudice exists under the interstate commerce act is entirely too remote and speculative to be given any consideration whatsoever.

As above pointed out, the private-car owners are not here seeking any advantage over the mine owners depend-

ent upon system cars in the use of any of the general facilities of the carriers.

Is there anything unreasonable in the practice of according to private-car owners a greater proportion of the carriers facilities than that accorded operators dependent upon system cars when in so doing it is not to deny the operators dependent upon system cars reasonable service? Or, stated differently, if the carrier moves all traffic offered it by the operators both in private and system cars, and it so happens that there is a shortage of system cars, and that the private cars predominate in number, would it be unreasonable to transport all the private cars and system cars, or should the private cars moved not exceed the percentage of system cars placed at the mines and offered for transportation, the balance of the private cars to remain idle? To state the proposition is to answer it.

The act contemplates the furnishing of service and of the facilities by the owner or the shipper of freight. Section 15, paragraph (13).

The Congress has thus recognized the use of the privately owned cars and has limited our power to touch that right to our power over the carriers. We can not declare that right unreasonable or unjustly discriminatory, or unduly prejudicial or unlawful because of something that is inherent in the nature of that right, because by so doing we would be abrogating a right which the Congress has recognized and which we have stated could only be abrogated by appropriate legislation. If in the exercise of that right preference is accorded to the private-car owners in the use of the carriers' general facilities another question is present. A perusal of our decisions in this question, as well as those of the courts, will show them to be in full accord with this reasoning. There has been no change in the law since those decisions which would warrant us in now holding otherwise.

Upon the further hearing much new evidence was submitted to support the claim of the necessity for the use of private cars by some of our most vital industries.

The private-car owners can be grouped generally into three classes:

(1) Those that own the plants, the mines, and the cars, the latter being used to transport coal from the owned mines to the plants of the owning company. In this class are included the Bethlehem Steel Corporation, the United States Steel Corporation and its subsidiaries, Pittsburgh Plate Glass Company, Youngstown Sheet & Tube Company, Wisconsin Steel and International Harvester Companies, Ford Motor Company, and the Steel Company of Canada.

(2) Those that own the cars and the plants, but not the mines, and which have long-term contracts with specified mines for the entire output of such mines. Included in this class are the by-product coke ovens not connected with the steel and other plants enumerated in class (1), and the Public Service Electric Company.

(3) Those that own the cars and the mines, but which are dependent upon outside contracts for the disposition of the coal. In this class may be included the Berwind-White Coal Company and the Westmoreland Coal Company.

The necessity of each class for a regular supply of suitable coal was explained at great length by high officials of corporations represented by each of these groups. Time and space will not permit an elaborate discussion of the vast amount of the very illuminating facts presented by each. I will therefore content myself to briefly point out some of the essential facts which show conclusively the absolute necessity for the steel and by-product coke corporations to secure a regular and adequate supply of suitable coal, which the past has demonstrated can not be secured alone in system cars during periods of car shortage.

The Bethlehem Steel Corporation at the time of the hearing operated over 2,000 by-product coke ovens, which are located at its different plants. These plants produce nearly every class of finished product, including rails, frogs, switches, railroad cars, structural steel, and ordinance

material. These products require the finest grades of steel, particularly with reference to phosphorous and sulphur content. As the use of steel making continues to develop, the necessity for selecting special coals will increase. One of the greatest economic developments in the steel industry during the past 20 years has been the utilization of by-products of coking coal. These by-products can only be utilized at the works, because at the coal mines there are no uses for the gas and other by-products. The character of its coking qualities and its physical characteristics have to be considered with great care to make the coke from the by-product ovens suitable for immediate use in the blast furnaces. It is necessary, therefore, to select the coal mines which produce suitable coal, and even at best the coal from suitable mines must usually be mixed with coal from other mines to get the desired results. Coke of an inferior quality manifests itself mischievously in a blast furnace on account of what is termed "structure." Not all low-volatile coal offered can be used, because to be suitable it must be of a certain chemical composition and possessing a property commonly called "caking." For the steel industry coke in large lumps is necessary, the size being important on account of the service being required in the furnace, thus narrowing the field from which coal for this purpose can be secured. This property of the coal which results in "caking" is lost by storage. A daily tonnage of coke is required, as blast furnaces are designed and built for continuous operation. Interference with this operation means many ills to the furnaces and their subsequent operation.

This corporation owns 31 coal mines, with an approximate present capacity of 9,500,000 tons per annum. These mines were most carefully selected for the metallurgical and coking qualities of their coal. Of the coal available to it only 15 or 20 per cent. is suitable for coking purposes. Over 300 coal properties were tested with a view to purchasing, and only 5 per cent. of them contained coal meeting the physical and chemical requirements to produce coke

for steel making. After the selection and purchase of these specific mines it proved impossible, in times of car shortage, to move enough coal from them to the plants to keep the plants in operation. Partial shutdowns with attendant unemployment followed. The result was the purchase of 3,975 private coal cars, which are used solely in transporting coal from the mines to its own plants for its own consumption. No system cars are used at the mines using private cars.

A by-product coking plant is usually made up of one or more blocks or batteries of ovens. All batteries in one plant are of uniform height. Each oven has a system of flues in which gas is burned and the oven is heated through a silica wall from 4 to 6 inches in thickness. The ovens are built of silica brick. It is necessary to heat the oven very gradually as the brick has a very high factor of expansion. One battery of ovens will expand as much as four feet. The expansion joints in the brick work are between every two ovens, which makes it necessary to heat these two ovens carefully and gradually. It takes from six to eight weeks to heat a plant before it can be put in operation. If shut down suddenly it would wreck the brick work and cost from $300,000 to $500,000 for replacement. If the battery has to be cooled off it is put out of operation for from two to three months. The brick required for these ovens are in specially molded shapes and are not carried in stock, and take four months to make. The essential elements for the successful operation of a by-product coking plant are a continued operation, with a continuous and regular supply of high-grade coal of uniform quality. A continuous operation is necessary because the by-product plants are under contract to furnish daily a fixed amount of gas to the gas companies, which, in turn under their franchises, furnish gas to numerous municipalities, and generally speaking, have no facilities of their own for producing gas. A regular supply of a particular kind of coal is necessary to secure the volume of gas required. The quantity, quality, and b. t. u. content of the

gas so furnished must be constant, and must also meet trade requirements.

Not all coal is good gas burning or coke running, due to the volatile content. A sudden change from one coal to another would cause trouble. As indicating the importance of the constant supply of suitable coal, one of the large by-product plants maintains a test plant to determine the kind of coke which can be made from the different grades of coal. Before contracting for coal from 500 to 1,000 tons of coal are run through the plant and the cokes thus produced are furnished to the trade for the purpose of determining whether that particular coke will meet requirements. Coke produced at such by-product plants must be of uniform grade, low in sulphur, and uniform in structure, as it competes with that received from the beehive coke ovens located at or adjacent to the mines, which always secure a uniform supply of coal. Beehive ovens are crude, simple, and inexpensive; can be started up or shut down without serious injury, and are located close to the mine. They receive their coal continuously from the same mine and therefore produce a uniform product. They are therefore not subject to the transportation difficulties encountered by the by-product ovens. Coke made in by-product ovens is to a large extent supplied to plants operating water-gas machines. This coke must be low in ash, that does not fuse at low temperature. Otherwise the machines will become clinkered and the capacity will be reduced 50 per cent. If the coke is bad the gas company's capacity is cut down and the public is not supplied. The by-product coke industry is vital to the private individual, or the householder because it helps to cheapen domestic gas, which supplies a high-grade domestic fuel that is cheaper than anthracite. It supplies sulphate ammonia which is the best raw material for fertilizer for the farmer, and has increased the output of this fertilizer material over 100 per cent. In 1900 a little over 1,000,000 tons of by-product coke were produced, whereas in 1920 the output was over 28,000,000 tons. Over $200,000,000 has been

invested in the last 10 years in by-product coke plants and their accessories. They are built throughout the country to augment the natural gas which is giving out in various districts. Its use is being extended very rapidly. The basis for the future chemical industry is dependent upon it. The dye industry in this country has grown enormously as a result of the by-product coke operations. The by-product coke industry of this country has made enormous strides in the last few years. The record shows that for every ton of coal coked in a by-product oven there is saved approximately, varying with the kind of coal used, 25 pounds of sulphate of ammonia, 6,000 feet of gas, 10 gallons of tar, and 3 gallons of motor fuel.

The by-product coke operators generally have had unsatisfactory experience in keeping their plants in operation with the kind of coal necessary, particularly during periods of car shortage. To protect against such shortage these private corporations have purchased coal cars and have invested therein several millions of dollars.

The aggressive and destructive attack which the majority report is upon the by-product coking industry, retarding advance in the art of steel making and utilization of coal-tar products, is timely for the nation's rivals. The producers of Germany, and other European countries, are consolidating their position to take control of world markets, including our own, and to meet our growing rivalry. The phenomenal development of the coal-tar industry in this country since the beginning of the World War has been well said to be "one of the romances of American business, and world business as well." The American dye industry is an illustration, but dyes are only one of many coal-tar products. Others include roofing and road material, fertilizers, ammonia, benzol, motor benzol, toluol, naphtha, benzine, toluene, naphthalene, photographic materials, medicines, perfumes, flavors, and articles too numerous to mention.

The majority report gives this industry the most serious and alarming setback it has ever had. It is the greatest

benefit that could be conferred upon our foreign competitors in science and industry. The one thing above all others they would have us do is to abolish the use of the private car. I can see no justification or excuse for the damage done. The private car, without adding a penny to the general burden, increases transportation facilities generally available. Its owners provide for themselves additional cars without which they would be entitled to share in the distribution of all other equipment. It is undeniable that those who oppose their use are benefited by them. To bar them serves only to foster private greed and envy at the expense of public welfare.

I have not attempted to deal exhaustively with the mass of unanswerable testimony placed before us upon further hearing which, seemingly, the majority report utterly ignores. Witnesses Rust, Berwind, Schwab, and other leaders in the industrial arts have made a showing which should have enlightened us. I am unable to comprehend why they failed. They have conclusively demonstrated that the private car is essential to the economical and efficient bunkering of ships and to the carrying on of many of the most important industries in the country. No attempt to answer their testimony was made, and no answer is possible. Some of the most important achievements within the Nation's reach are dependent upon the use of the private car. On questions regarding industries so highly technical and scientific as the making of steel, and many other products, we should accept as basic facts the conclusions of specialists. We have such conclusions by the most eminent authorities in the country. By disregarding them and setting up our own impressions, we incur the censure that arbitrary action, without support in law or fact, denying justice, should bring upon us.

Cox, *Commissioner*, dissenting:

For reasons already set forth in my former dissenting expression in this case, 80 I. C. C. 520, at page 587, and from consideration of the additional testimony furnished

at the further hearing, I am unable to concur in the findings of the majority.

This question is generally recognized as of vital importance, and perhaps no question which has come before the commission in recent years is more closely related to the industrial life of the Nation than this case which deals with the distribution of coal cars. Public utilities, transportation agencies, and other industries which are not only intimately associated with the distribution of heat, light, and power, but with practically all the necessaries of life as well, are all dependent upon a regular and dependable fuel supply. The present efficiency in transportation is largely dependent upon an unfailing supply of coal. If this supply is reduced, or even restricted, the industrial life of the country is at once affected and the public welfare suffers accordingly. President Coolidge has emphasized the need for the elimination of waste and there is splendid opportunity for cooperation along these lines in the production and distribution of coal. Our position in connection with the competitive markets of the world also emphasizes the need for such cooperation. It is my thought that the use of the assigned car as well as private cars is along the line of efficiency and economy of operation. They both occupy an important place in the field of efficient transportation and their use should be encouraged rather than condemned.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 23d day of December, A. D. 1924.

No. 12530.

In re Distribution among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

It appearing, That by order dated March 22, 1921, the commission entered upon an investigation into and concerning the reasonableness and propriety of car-distribu-

tion rules so far as they apply to privately owned coal cars and cars furnished for railway-fuel coal, with a view to prescribing such just and reasonable rules and regulations as might appear to be necessary;

It further appearing, That by order entered June 13, 1923, the commission entered its order requiring the respondents to change their practices with regard to the distribution of privately owned coal cars and cars placed for railway fuel coal so as to comply with the findings of the commission embodied in its report, filed herein, 80 I. C. C. 520;

It further appearing, That by order entered on October 5, 1923, the commission reopened the case for further hearing, and pending its report on said further hearing, the effective date of said order entered on June 13, 1923, has been postponed until January 15, 1925;

And it further appearing, That said further hearing has been had, and the case submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the order entered in this proceeding on June 13, 1923, be, and the same is hereby, further modified so as to become effective on March 1, 1925, instead of on said January 15, 1925.

It is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[SEAL] GEORGE B. McGINTY,
Secretary.

EXHIBIT H.

No. 4906.

IN THE MATTER OF PRIVATE CARS.

Submitted April 1, 1918. Decided July 31, 1918.

1. An important part of interstate commerce of the country is transported in privately owned cars. It is to the interest of the owners, carriers and public that their operation should be continued, under such rules and regulations as will insure their efficient handling without discrimination against any shipper or particular description of traffic.
2. Under the situation as it exists, and under the facts and circumstances shown of record, shippers should be permitted to lease cars to transport shipments in interstate commerce from sources independent of carriers by railroad.
3. A charge in addition to freight rate should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car, less expensive and not so difficult to operate.
4. Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts.
5. The allowance of three-fourths of a cent on the loaded and empty movements for the use of tank cars of all kinds by carriers should be increased to 1 cent a mile for the loaded and empty movements; the increased allowance should be paid for the use of live poultry, palace stock, and heater cars; and the increase should not apply to stock, coke, coal, rack, flat, box, or pocket cars, although they may be privately owned.

6. Carriers should publish in their tariffs a rule that privately owned or leased cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee.
7. Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars.
8. Reicing charges on shipments of fresh meat, packing-house products, and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; carriers should perform the service of reicing and make the charges therefor; and shippers of these products should not be permitted to perform the service of reicing their own and competitors' shipments en route, either directly or through corporations controlled by them.
9. Carriers should provide in their tariffs that private cars standing on tracks of owners shall not be subjected to demurrage charges.
10. The Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made at the hearings as to modifications in rules and practices should be adopted by the association.

John M. Faison for North Carolina shippers; H. K. Crafts and W. W. Manker for Armour & Company and controlled corporations; M. R. Beaman for Chamber of Commerce of Newbern, N. C.; G. R. Williams and J. C. Chase for Chase & Company; E. D. Dow for Florida Citrus Exchange; J. F. Thomas for Schrader & Company; Lloyd S. Tenny for Florida Growers & Shippers' League; W. S. McDowell, F. D. Warner, J. B. Stringfellow, and C. A. Colcaugh for shippers of Gainesville, Fla.; J. W. York and E. H. Dennison for shippers of Jacksonville, Fla.; Ralph Crews for

American Cold Blast Transportation Company and Lackawanna Live Stock Express; A. C. Moore for Safety Car Heating & Lighting Company; Elias Mayer for General American Car Company; A. P. Regal for Seger & Sons Piano Company; and Luther M. Walter and John S. Burchmore for Morris & Company's Refrigerator Line, Cudahy & Company, Procter & Gamble Company, and various tank car owners.

Henry Bowen for Contac Process Company; H. W. Davis and T. J. Norton for Santa Fe Refrigerator Despatch Company; Paul Garrett for Garrett & Company; H. B. Kooser, H. G. Herbel, and F. G. Wright for American Refrigerator Transit Company; Fred H. Wood and H. A. Scandrett for Pacific Fruit Express; G. W. Geary for Kitter Elliott Erection Company; Thomas Creigh and C. O. Cornwell for Cudahy Packing Company; Charles W. Bowden for Pennsylvania Salt Manufacturing Company; A. D. Peters for Peters Mill Company; and J. E. Robinson for Albert Miller & Company.

R. D. Rynder, F. H. Frederick, and R. O'Hara for Swift & Company, Swift Refrigerator Transportation Company, Swift Live Stock Transportation Company, National Manufacturing Company, and Libby, McNeill & Libby; E. Haupt for Strobel Steel Construction Company; O. W. O'Berg for George A. Hormel & Company; C. A. Jennings for American Cotton Oil Company; G. E. Hutchinson for Central Commercial Company; Douglas Campbell and H. E. Felton for Union Tank Line Company; M. H. Treadwell for M. H. Treadwell Company; L. F. Moore for T. M. Chelsea Manufacturing Company and Salpulpa Refining Company; P. E. Turner and G. B. Albright for Shippers Refrigerator Car Company; H. H. Brigham for North American Car Company; Jesse M. Watkins for Mather Stock Company; and Edward G. Davies for certain fruit and vegetable shipping associations.

C. D. Chamberlain, W. E. MacEwen, and J. W. Boltz for National Petroleum Association, Peerless Transit Line, and Western Petroleum Association; Cassiday, Butler,

Lamb & Foster, by C. R. Hillyer, for Live Poultry Transportation Company and Atlantic Fruit Distributing Company; W. S. Logan and J. W. Archibald for Dairy Shipper's Despatch; John C. Scales for National League of Commission Merchants of the United States; J. A. Morgan for National Cooper's Association and National Tight Stave & Heading Association; H. W. Marsh for Milwaukee Refrigerator Transit & Car Company; J. E. Considine, G. A. Kelly, and J. O. Wilson for the Texas Company; T. A. Gantt and J. W. Bingham for Crystal Car Line; E. H. Holden for Glen Pool Tank Line Company; L. F. Moore for certain Oklahoma refiners; and George H. Stevenson for General Chemical Company.

George Patterson Boyle for American Refrigerator Transit Company, Chicago, New York & Boston Despatch, and Sinclair Refining Company; Charles H. Hamill for California Despatch Line; F. A. Morgan for Humble Oil & Refining Company, Magnolia Provision Company, Houston Packing Company, and Fidelity Cotton Oil Company; Ranstead, Cavender & Kaiser for American Private Car Owners Association, American Agricultural Chemical Company, Arche Daniels Linseed Company, Contact Process Company, North American Oil & Refining Corporation, Continental Refining Company, Garrett & Company, Gateway Car Company, Oil Seed Company, Southern Creosoting Company (Limited), Lubricating Oil Company, Lutz & Schramm Company, London-Savannah Naval Stores Company, Magnolia Provision Company, Pelican Oil Refining Company, and Titusville Oil Works; F. J. Reichman for the Streets Company; J. Ralph Fascher for Wilson Car Lines; Benjamin C. McPherson for Sun Company, Bay Terminal Railway, and Delaware River Union Railway; A. B. Combs for Marshall Oil Company; Thomas B. Koeneke for Indianhoma Refining Company; B. M. Parmenter for Lawton Refining Company; and Robert L. Welch and W. E. McEwen for Western Petroleum Refiners Association.

Walter E. McCormack for Jacob E. Decker & Sons; John D. Reynolds for Western Oil Jobbers Association; Cliffard

Thorne for Western Petroleum Refiners Association and Western Oil Jobbers Association; O. S. Keith for Keith Railway Equipment Company; C. B. Heinemann for National Live Stock Exchange; A. B. Baker for Cleveland Provision Car Company; and D. T. Amend and Frank B. Miller for Keystone Coal & Coke Company.

F. W. Breimier for Federal Trade Commission; Walter Condran for Board of Railroad Commissioners and Commerce Counsel, state of Iowa; H. M. Freer for The Fleischmann Transportation Company; J. J. Dougherty for Quemahoning Coal Company; C. A. Severance, Stiles W. Burr, A. R. Urion, and C. J. Faulkner, specially for Armour Car Lines and Armour & Company; Charles Rippin for Merchants Exchange of St. Louis, Mo.; C. B. Ellis for Gulf Refining Company; and W. A. Schumacker for Fruit Dispatch Company.

R. Walton Moore for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway, and Florida East Coast Railway Company; Arthur Hale, Wilson E. Symons, Bertram Walker, and Hugh B. Rowland for Special Private Car Committee of the American Railway Association; R. V. Fletcher, A. P. Humburg, and E. F. McPike for Illinois Central Railroad Company; W. F. Dickinson for Chicago, Rock Island & Pacific Lines; Fred H. Wood for Southern Pacific system; H. A. Scandrett for Union Pacific system; B. E. Morgan for New York, Chicago & St. Louis Railroad Company; G. W. Creighton for Pennsylvania lines; O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company; R. W. Barrett, for Lehigh Valley Railroad Company; C. B. Phelps, D. M. Goodwyn, E. L. Hill, and William Burger for Louisville & Nashville Railroad Company; E. S. Ballard, A. P. Humburg, H. A. Scandrett, L. T. Wilcox, F. H. Wood, D. P. Connell, Bertrand Walker, and F. W. Flott for railroads generally; Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company; John F. Finerty for Great Northern Railway Company; and Robert H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

MCCHORD, *Commissioner:*

A proposed report was prepared by the examiner, and served on the parties of record. Exceptions were filed by certain interested parties, and argument was had before us on such exceptions. Certain changes in the language of the report and suggested conclusions have been made. As so changed and modified the report is adopted as that of the Commission.

This is a proceeding of inquiry upon the motion of the Commission into the rules, regulations, and practices governing the operation of private cars on the railroads of the country. The proceeding was instituted in 1912, and the first hearing was had in November, 1913. Controversy with respect to the jurisdiction of the Commission over private car lines took the matter to the courts. *Ellis* v. *I. C. C.*, 237 U. S., 434. Later the power of the Commission to require carriers to supply equipment to shippers was challenged, and that matter became the subject of court proceedings. *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. The court cases caused delay in the disposition of this proceeding. When the matter was again taken up for consideration, it was deemed best to reopen the case, give interested parties opportunity to submit new evidence, if desired, and advise the Commission as to changed circumstances and conditions, if any, since the case was originally submitted. Hearing was had, and the matter is now submitted for final disposition.

SCOPE OF THE INVESTIGATION.

The original order in the case provided that the investigation should be prosecuted to determine whether the minimum weights applicable to private cars, allowances paid by carriers for the use of them, and practices, rules, and regulations governing icing and handling such cars by rail carriers subject to the act, are unreasonable, unduly discriminatory, or otherwise in violation of law. Supplemental orders were issued, instituting special inquiry into the rules,

regulations, etc., governing the handling of cars for shipments of fish, fruits, and vegetables from points on the lines of the Atlantic Coast Line Railroad in Florida, Georgia, and North Carolina, to points in eastern trunk line and central freight association territories.

In 1913, interrogatories were sent to all private car owners and users in the country. They were asked to show in detail the financial results to them from the operation of their cars; the loaded and empty mileage; the cost of the cars; the cost of repairs to them, etc. At the same time, interrogatories of a similar nature were sent to all rail carriers to determine the total number and different kinds of cars owned by them; the empty and loaded mileage; the amounts paid to private car owners; cost of repairs, etc. The returns show operations for the year 1912. When the proceeding was reopened, similar interrogatories were again sent, with a view to securing results of operation and other data for each year from January 1, 1913, to January 1, 1918. Answers were received, and the information secured will be discussed hereinafter.

ORIGIN AND DEVELOPMENT OF PRIVATE CARS.

For the purpose of this discussion, a private car will be considered as one not owned directly by a railroad company. When railroads were first chartered and built in this country, they were simply toll roads. The shipper furnished the vehicle and the railroad company the road and the motive power. The shipper paid for the use of the roadbed, rails and motive power. By 1845, however, this manner of conducting railroad transportation had completely changed, and the railroad companies furnished all the facilities used in transportation. This continued until shortly after the Civil War, when fast freight lines were organized for the movement of through cars over various lines of railway in the country. They were owned by independent companies or corporations. The cars were specially constructed with movable trucks, so that the body of the car and its contents could be moved from one railroad to another without un-

loading, as was the general custom. The tracks of the different railroads often were, at the time, of different gauges. These car lines quickly became popular and profitable, and were in a short time absorbed by the railroad companies. There was some use of privately owned cars as early as 1867, but it was not until about 1885 that sufficient of them were in use to make them a factor to be reckoned with in the transportation problems of the country. In 1889, an investigation of private cars and car lines was made by the Commission, and the results are discussed in the annual report to the Congress of that year. An investigation into the relations of railways and the owners of private cars was made by the Commission in 1892, which is referred to in its annual report of 1893. The early reports of the Commission contain discussions respecting rates on oil in tank cars, as compared with oil in barrels, but the present proceeding is the first general investigation undertaken by the Commission into the ownership and operation of all private cars, the relation of the owners of such cars with the railroads of the country, and the relation of owners to each other and the public.

In the development of freight traffic in the different sections of the country it became evident that many commodities might be transported to much greater advantage in certain kinds of cars especially adapted to the character and peculiar qualities of the particular articles, than in the ordinary cars furnished by carriers. The latter were slow to respond to the demand for improved cars of special pattern, and frequently failed to provide them. Hence, by agreement between shipper and carrier, the former undertook to provide his own cars for the transportation of his particular articles. In analogy to the custom that prevailed between connecting carriers in respect to the use of each other's cars, the railway company became the hirer of the shipper's cars, paying for their use on the basis of a certain amount per mile on the loaded, or loaded and empty, movements. Initiated in a small way with respect to a few articles, the development has been in the direction of rapidly

expanding use of private cars. It became necessary that some industries should have a constant and adequate supply of cars in order to conduct business on a large and economical basis. Articles of a perishable nature required prompt movement; some of such articles moved during short periods of each year; and there were demands for cars of special type from many different sections of the country which the carriers could not, or did not, supply. It has also come about that private cars now in use are not owned by shippers alone. They are owned in large numbers by separate corporations, who make their arrangements for the use of the cars with shippers, and procure from the railroads the payment of mileage. Many of these companies lease cars to railroad companies, receiving only the mileage allowance for their use; others lease their cars to carriers for an agreed monthly rental, the latter to keep the cars in repair; still others lease to shippers at an agreed rental per month, and credit the mileage earnings to the latter. Many of these concerns are car builders, who supply cars of special design to shippers on order. They have facilities for repairing their cars located at convenient points in different parts of the country.

For convenience, the car owners who furnished information in answer to the interrogatories sent out in 1913, were divided into four classes, as follows: Class A, independent companies not owned or controlled by railroads or shippers; class B, incorporated car lines owned or controlled by railroads; class C, incorporated car lines owned or controlled by shippers; and class D, industrial concerns whose cars are owned by them and are used in connection with and incidental to their commercial activities. In 1913, answers were received from 641 private car owners. Under the grouping, they divide as follows: Class A, 37 owners; class B, 6 owners; class C, 22; and class D, 576. Car ownership changes frequently, and it is difficult to make an exact analysis of the number of cars or owners at any given date. New cars are constantly put into service, the old cars are scrapped or wrecked, and new industries are established in various parts

of the country which require cars of their own to conduct their business with efficiency.

January 1, 1918, there were approximately 1,000 owners of private cars of all kinds used in commercial service in this country, not including railroad companies. The number owned by each ranges from 1 to 18,000. According to Boyd's I. C. C. A-826, effective December 14, 1917, a publication designed to show gallonage capacities of tank cars of the country for the computation of freight charges, there were 706 owners of tank cars, not including railroad companies. On January 1, 1913, there were shown by the same publication, 271 owners. No tabulation of the answers to interrogatories sent out in January of this year has been made to indicate the number of owners in groups as was done in 1913. It may be said that an examination of the returns, in a general way, shows that there has been no substantial change in the number of owners in the different groups since January 1, 1913, except a large increase in class D owners. None of the returns includes cars that are used about industrial plants for interplant switching, those used by contractors in connection with construction work, cars in the hands of manufacturers and builders, or cars which may be used in interstate commerce but which in fact are not so used. The following table shows the number of the several kinds of freight cars owned on January 1, 1913, by private interests, compared with like cars owned by railroads:

Kind of cars.	Owned by private interests.	Owned by railroads.	Total.
Refrigerator	54,582	48,926	103,508
Tank	30,039	9,150	39,189
Stock	21,712	71,299	93,011
Coal and Coke	24,140	801,042	825,182
Heater	510	648	1,158
Live Poultry	891	114	1,005
Other kinds	5,305	1,370,532	1,375,900
Total	137,179	2,301,711	2,438,890

There are no statistical data compiled by the Commission previous to 1889, which give reliable information as to the

number of cars owned by other than railroad companies, nor, in fact, the number of different kinds of cars available for use in interstate transportation actually in operation. Poor's Manual shows that in the year 1890 there were 3,398 refrigerator cars owned by railroad companies. On October 1, 1889, railroads owned 1,342 tank cars. *Ind. R. Ass'ns. Tit' vl. and Oil City* v. *W. N. Y. & P. R. R. Co.*, 5 I. C. C. 415, 435. As shown above, on January 1, 1913, railroads owned 48,926 refrigerator cars, and 9,150 tank cars. January 1, 1918, railroads owned approximately 65,000 refrigerator cars and 11,277 tank cars.

In 1889, there were 6,552 privately owned tank cars; in 1912, 30,022; and in 1918, approximately 70,000. It was stated at the hearing in February of this year that there were about 6,000 tank cars under construction. The number of tank cars now privately owned is an approximation because it is difficult to ascertain the exact number. Ownership constantly changes, new cars are added, and there is some duplication in the reports for the reason that both the owner and lessee sometimes report the same cars. Boyd's I. C. C. A-826, and supplements above referred to, shows a total of 85,260 tank cars in use in this country. Of these, 12,217 are owned by railroad companies. An examination of this publication discloses some duplications. From the figures obtainable from answers to interrogatories, and estimates from other sources, there appear to have been about 67,000 privately owned tank cars on January 1, 1918. Allowing for duplications in Boyd's publication, and for failure to report by owners to questions sent out by the Commission, it is probable that 70,000 is substantially the correct figure.

In 1910 there were approximately 50,000 privately owned refrigerator cars; in 1912, 54,582; and on January 1, 1918, approximately 65,000. These figures are approximates, because it is difficult to keep up with the constant changes of ownership, cars that are added, and those that are scrapped each year. For example, in February of this year, Swift & Company were manufacturing at their shops in Chicago four new refrigerator meat cars every day.

January 1, 1913, there was a total of 137,179 of all kinds of cars owned by private interests. This includes those owned by railroad-owned car lines. January 1, 1918, there were approximately 135,000 tank and refrigerator cars so owned. Add to this 65,000 other privately owned cars, including stock, coal, poultry, heater, palace stock cars, and box cars, and the total ownership on that date was approximately 200,000. At a conservative estimate, the amount of money invested in these cars is $250,000,000. In addition to this, large sums of money have been invested by owners in the construction of repair plants, side tracks, etc.

There has been a large increase of privately owned cars in the last three years. This increase is relatively larger than for any previous similar period. This is particularly true of tank cars. During that period there has been an unprecedented shortage of cars on railroads of the country, caused in part by the enormous increase in demand for certain articles, due to the war; and also, in part to congestion of cars along the North Atlantic seaboard, and at important terminals in official classification territory.

The congestion caused much slower movement of cars. It is estimated by one large car owner that it now requires three cars to perform the service that was performed by one in normal times. It quickly developed during the shortage that if large owners of private cars were to do the same or a greater amount of business than in previous years, it would be necessary for them to buy or manufacture more cars and put them into service, and many of them have done so.

PRIVATE CAR LINES.

Railroad-owned car lines are in a different situation than those owned or controlled by shippers or independent companies. Examples of such lines are the Pacific Fruit Express, owned jointly by the Union Pacific and Southern Pacific systems; the Santa Fe Refrigerator Despatch Company, owned by the Atchison, Topeka & Santa Fe

Railway Company; the American Refrigerator Transit Company, owned by the Missouri Pacific and Wabash in the ratio of 76 to 24, respectively; and the Chicago, New York & Boston Refrigerator Company, owned by the Grand Trunk Railway system. The cars owned by these companies are interchanged with carriers other than the owners, exactly the same as all railroad cars, except payments for their use, and the cars are "at home" on the lines of the owning carriers. They are more properly to be termed railroad cars. All charges to the shipper in connection with the operation of the cars of these companies are published in tariffs of the owning carriers and concurred in by their connections. The officers of the railroad companies are generally officers of the subsidiary car lines. The employees of the latter ride on passes, and freely use the railroad telegraph lines. It is stated in evidence that these lines were organized chiefly for the purpose of looking after perishable freight originating on the lines of their owners, and that they are really a separate department of such carriers. Separate incorporation, it is asserted, is a convenience in accounting and operation. It seems quite probable that one strong inducement for the incorporation of some of them was that at the time mileage earnings were much greater than had been received from the per diem allowance, which in 1902 was 20 cents.

The Merchants Despatch Transportation Company, formerly owned by the New York Central, and the Central Fruit Despatch Company, formerly owned by the Illinois Central, are not now operating. The cars owned by them are now operated directly by the railroad companies.

Some of the carrier-owned lines now in operation receive nothing but mileage earnings, and the earnings from refrigeration, where they perform the service for the owning companies. Others are paid a commission, usually 12½ per cent. of the gross revenue received by the carriers with which they have contracts, on business solicited and secured by their employees, and routed via the contract carrier lines. Examples of these are the American Refrigerator Transit

Company, and the Chicago, New York & Boston Refrigerator Company. Solicitors employed by these car lines are experts, and advise farmers and other shippers as to the production of more varied and larger quantities of fruits and vegetables, and assist and advise shippers of dairy products in various ways to prepare shipments for transportation, as to loading, etc. They are comparable to soliciting forces that have been employed by carriers which have perishable freight departments of their own, such as the Chicago, Burlington & Quincy and the Pennsylvania.

With respect to the commission paid these car lines, there is no evidence which permits of a comparison between the amount paid them and the cost of soliciting dairy products and other perishable freight by carriers owning their own cars, to determine whether they are excessive. The figures submitted by the car lines which receive commissions do not show that their earnings are more than reasonable, considering investment and expenses. For example, the Chicago, New York & Boston Refrigerator Company reports that its percentage of return on investment, less operating expenses, maintenance, salaries, taxes, and depreciation, was 6 per cent. in 1909; 5 per cent. in 1910; 4.5 per cent. in 1911; 5.7 per cent. in 1912; 2.8 per cent. in 1913; 1.7 per cent. in 1914; a deficit of 0.63 per cent. in 1915; 1.9 per cent. in 1916; and a deficit of 3.1 per cent. in 1917. The American Refrigerator Transit Company has not received a return on its investment except five years in the last ten, and not to exceed 2.52 per cent. in any year of that period.

It does not appear that connecting lines pay commissions to secure shipments in cars owned and operated directly by carriers. The Chicago, New York & Boston Refrigerator Company, as before stated, has an arrangement with the Grand Trunk system. A shipment reaching New York City over the Lehigh Valley, originating on the Grand Trunk, if solicited by the Chicago, New York & Boston Refrigerator Company, would entitle the latter to a commission on the entire movement, the Lehigh Valley having received a shipment, without individual solicitation, that it might not have secured.

In any event, these charges do not affect the amount paid by the shipper for the transportation, and because the car lines are owned by railroad companies and the earnings are a part of the returns from the entire service of the company, they are not directly at issue in this proceeding. The evidence is not sufficient to determine any question with respect to the propriety of commissions and their payments, as described.

At this time, when the railroads of the country are under unified control, paid soliciting forces for any carrier have little office to perform. Whether as industrial agents they may continue to operate in the interest of more and a wider diversity of production is another question not within the scope of this investigation or the Commission's authority. Under such circumstances, the question of payment of commissions of the nature referred to will not be further considered herein.

With reference to car lines owned by shippers, it may be said that generally they are not engaged in the car leasing business. The cars they own are used to transport their shipments, and it is only occasionally that cars are leased to others. However, there was one exception to this general rule. When this proceeding was instituted, a subsidiary of Armour and Company, of Chicago, Ill., and Kansas City, Mo., known as Armour Car Lines, supplied the owning company with cars for shipment of its fresh meats and packing house and dairy products, and also furnished cars to carriers and shippers for transportation of fruits and vegetables. During the pendency of this investigation, and on November 1, 1914, the Armour Car Lines sold to Armour and Company all of the meat refrigerator cars owned by it, and the shipper has operated them since. By contract dated November 5, 1914, the Armour Car Lines sold to the Fruit Growers Express, Incorporated, all of the fruit and vegetable refrigerator cars owned by it. The icing stations owned and operated by the Armour Car Lines at East St. Louis, Ill.; Columbus, Ohio; and Altoona, Pa., with its interest in other stations at Del Ray, Mich.; Havelock, Ont.; Nashua, N. H.;

and Newport, Vt., were sold to the Utility Operating & Supply Company, Incorporated. Armour and Company controls the Fruit Growers Express under the following conditions: The stockholders of the Fruit Growers Express, except directors' qualifying shares, are the same as the stockholders of Armour and Company, and they hold their stock in the same proportion as the stockholders of Armour and Company hold stock in that company. It is insisted that the fact that the stockholders of the two companies are the same does not make one the subsidiary of the other, as stated in the report proposed by the examiner. Technically this is true, but the fact remains that the Fruit Growers Express is controlled by Armour and Company. The offices of the former are at the Union Stock Yards, Chicago, in Armour and Company's building. The Utilities Operating & Supply Company is controlled in the same way by Armour and Company. Armour and Company now conducts in its own name the meat transportation business in its own cars that was formerly done by Armour Car Lines; the Fruit Growers Express has taken over the fruit and vegetable transportation business that was formerly conducted by Armour Car Lines; and the Utility Operating & Supply Company now controls and operates icing plants that were formerly owned and operated by Armour Car Lines. In other words, the three companies are controlled by Armour and Company, and have taken over the business that was formerly done by Armour Car Lines. The Fruit Growers Express leases its cars to carriers for the most part on agreed bases, and performs refrigeration service at rates named in such carriers' tariffs.

There is another class of car lines which deals almost exclusively with carriers. Reference is had to the Mather Horse & Stock Car Company and the Doud Stock Car Company, which are representative of the class. These companies own stock cars which are leased to railroad companies under contracts as to payment for their use, or their cars are secured by carriers on payment of 6 mills per mile. Much the larger number of these cars are operated under the

mileage allowance. Shippers are in no way interested in the arrangements that are made between the owner of such cars and the carrier. The shipper secures such cars on request to the carrier. When used by carriers they are really railroad cars and are treated as such by connections, and oftentimes the lettering on the cars is obliterated and the name or initials of the leasing carrier placed thereon. Some cars owned by companies of this class are leased to shippers under contracts, but the charges therefor are not uniform. The amount paid by carriers for the use of cars of this class which is now under control by this Commission, does not affect freight charges paid by shippers, or practices of carriers with reference to such shippers. However, this record shows that under present conditions, and, indeed for many years, the mileage allowance is not and has not been on a remunerative basis to the owners. The evidence is not sufficient to determine what payment should be made to this class of owners, who derive no benefit from the use of their cars except the mileage or other payments. The carriers and this class of owners should, if possible, reach an agreement as to the reasonable payment for the use of cars.

DIVERSITY OF USE AND MAKE OF PRIVATE CARS.

There are at least 31 different liquids regularly transported in tank cars, not including the different kinds and grades of acids and oils. There are 7 acids and 21 grades and kinds of petroleum oils, making an aggregate of 59 varieties of liquids. Cars used to transport the different liquids can not be interchanged readily, that is to say, a tank car loaded with fuel oil with an asphalt base can not be reloaded with refined oils, such as gasoline or kerosene, nor with edible oils, such as cottonseed or cocoanut, without thorough cleaning at an expense of from $5 to $35 per car. A car in which has been transported any of the petroleum oils can not be used for molasses or other edible liquids without thorough cleaning to remove every vestige of oil and odor. Some acids require peculiarly constructed cars. A car for tannic acid must be coated on the inside with acid

resisting material and all fittings must be of brass. Muriatic acid requires a wooden lined tank. Wine cars are mounted with a steel tank, lined on the inside with special enamel, surrounded on the outside with a wooden tank, with insulating material between it and the steel, to preserve the contents from deterioration during transportation; and casing head gasoline cars are insulated so as to preserve a uniform temperature, and are fitted with special dome-head arrangements and safety appliances. A tank car for transportation of asphalt and other heavy oils requires heater coils in order to liquefy the contents for unloading. Some tank cars are constructed with compartments so that two or more grades of oil may be transported at a time. Special loading and unloading facilities are necessary for oil shipments. It is necessary to force some oils out of the cars by steam pressure, others by the use of pumps, and from still others the liquid flows out by gravity.

Dairy and meat products may not safely be transported in a refrigerator car in which fish, sea food, or other odoriferous articles have been carried, without thorough cleaning and disinfecting. A refrigerator for the transportation of carcass meat is peculiarly constructed. The roof is braced to support racks from which are suspended hooks to hold the meat. It is more thoroughly insulated than the ordinary refrigerator. The car is cooled by means of iron brine tanks in each end, which are filled with crush ice and salt, insuring a lower temperature than can be secured in a car with wooden bunkers filled with cake ice without the use of salt.

Palace stock cars fitted with stalls for the shipment of blooded stock; stock cars with feeding racks and watering troughs; live poultry cars with 128 coops, so wired and arranged that poultry may be fed and watered and otherwise cared for en route; heater cars with stoves or other heating apparatus for shipment of potatoes in winter; rack cars for shipment of bark, barrels, staves, and coke; platform cars for shipment of car bodies, car trucks, and electric cars; flat cars for boilers, machinery, tanks, trucks, vans, etc.;

and special slot or "pocket" cars for large sizes of plate glass are some of the private cars regularly used for special purposes.

The perfection of the construction of the refrigerator car has in recent years led to its wider use. Originally it was designed for transportation of perishable traffic in the warm months. It has become quite as important an agency of transportation of traffic in cold months, to keep the articles contained in it from freezing. A modern insulated car will transport articles for longer distances in cold weather without damage than the ordinary box car. Refrigerator cars of modern make are now demanded by shippers who have come to realize that their shipments are delivered in much better condition, with less loss and damage, than was the case a few years ago with the cars of the earlier type. Not only is the demand for the best cars of this character, but it is highly important that they shall be kept in as near perfect repair as possible.

ALLOWANCES PAID BY CARRIERS.

Previous to 1902, the payment for the use of all cars in railroad service was on a mileage basis. In that year, for the use of railroad cars on foreign lines, a per diem basis was established, beginning at 20 cents, with a penalty of 80 cents per day if the car was detained more than 30 days; from July, 1906, to July, 1907, the per diem charge was 25 cents, with a penalty of 75 cents per day on cars held for more than 30 days; July, 1907, to March, 1908, 50 cents per day; March, 1908, to March, 1910, 25 cents; March, 1910, to August 1, 1910, 30 cents; August 1, 1910, to Jan. 1, 1913, 35 cents; January 1, 1913, to January 1, 1917, 45 cents; from January 1, 1917, to March 31, 1917, 75 cents; and from March 31, 1917, to date, 60 cents.

Allowances paid to private car owners have always been on a mileage basis. From 1867 to 1873, the rate was from 1½ to 2 cents per mile on all cars; 1873 to 1877, from 1 to 1½ cents; in 1877, it was made from ¾ of a cent to 1 cent;

in 1893, an allowance of 1 cent was fixed for refrigerator cars west of Buffalo, N. Y.; in November of that year, the rate was made 6 mills on all cars except private refrigerators, which were allowed 1 cent by western carriers and ¾ of a cent by eastern carriers generally. There were some modifications of the allowances in the east. For example, in 1909, refrigerator car owners were allowed 1 cent on movements from St. Louis to the Illinois-Indiana state line, and the Wabash Railway paid 1 cent on movements to Buffalo. There were certain other exceptions, not necessary to be stated. On October 1, 1917, the allowance for use of refrigerator cars between all points east of the Mississippi River became 1 cent. At this time, the allowance for refrigerator cars is 1 cent per mile on the loaded and empty movements between all points east of El Paso, Tex., Albuquerque, N. Mex., Salt Lake City, and Ogden, Utah. The territory west of the described line is known as the transcontinental zone. In that zone, on shipments requiring refrigeration in private cars for distances of 800 miles or less, the payment is 6 mills per mile; excess over 800 miles, ¾ of a cent; when loaded with freight not requiring refrigeration, 6 mills, regardless of distance; and when moving empty, no allowance. The reasonableness of the allowances in the transcontinental zone is the subject of complaint in Docket No. 10026 and subnumbers, heard in connection with this proceeding, and will be disposed of in a separate report.

The allowance on live poultry cars is generally ¾ of a cent, although there are a few exceptions when 6 mills is paid. On palace stock cars, except when moved in passenger trains, the allowance is on the basis of 6 mills per mile, with the exception of many railroads in the southeast, which allow ¾ of a cent. The allowance for tank cars is uniformly ¾ of a cent for loaded and empty movements. For use of all other cars, including coal, coke, stock, and box cars, the allowance is 6 mills per mile. None of the allowances include movements within the switching limits, as defined by carriers, within terminals.

OPERATION OF PRIVATE EQUIPMENT.

From the fact that private car owners have an interest in the prompt movement of their cars, records submitted in this case show that such cars move more rapidly, and also move empty to a greater extent than the same kind of cars owned by carriers. From exhibits submitted it is shown that private cars on 127 railroads of the country for the year ended June 30, 1912, made empty and loaded mileage as follows:

Kind of cars.	Loaded.	Empty.	Loaded.	Empty.
	Miles.	*Miles.*	*Per cent.*	*Per cent.*
Refrigerator	705,157,018	373,021,082	65.4	34.6
Tank	109,982,847	105,146,838	51.1	48.9
Live poultry	5,894,886	5,884,957	50	50
Stock	78,223,720	71,869,154	52.1	47.9
Coal and Coke	104,562,271	103,337,181	50.3	49.7
Other private cars	9,217,523	6,316,004	59.3	40.7
Total	1,013,038,265	665,575,216	60.35	39.65

For the same year the loaded freight car mileage of steam railroads in the United States amounted to 69.41 per cent. of the total, and the empty mileage 30.59. These figures do not include caboose mileage, but do include all freight cars in revenue service, both railroad cars and private cars. They also include company freight. It will be observed that the loaded mileage of all freight cars is about 15 per cent. greater than that of private cars. The two lots of cars are not fully comparable, however, for the larger movement of private cars is for perishable freight, which is everywhere given preferred service, but the comparison is worthy of consideration in connection with other facts and circumstances. The following exhibit, compiled from returns received from carriers in 1913, shows a comparison of loaded and empty mileage of refrigerator cars owned by shippers and those owned or controlled by railroad companies over certain representative railroads, for the year ended June 30, 1912:

Railroad.	Cars of lines owned or controlled by shippers.		Cars of lines owned or controlled by railroad companies.	
	Loaded.	Empty.	Loaded.	Empty.
Chicago & Erie	50.9	49.1	72.9	27.1
Erie	52	48	77.5	22.5
P. R. R.	51	49	63.5	36.5
P., C., C. & St. L.	51.6	48.4	59	41
C. & N. W.	54.6	45.4	79.9	20.1
C., B. & Q.	63	37	80	20
C., M. & St. P.	53.9	46.1	77.3	22.7

It will be noted that in every instance the percentage of the loaded mileage of the railroad-owned car lines is greater than that of the car lines owned by shippers.

A comparison of the per cent. of loaded mileage of refrigerator cars operated by railroad-owned car lines on the rails of the owning railroad with that of refrigerator-car lines operated by shippers is as follows:

	Per cent.
Loaded mileage on the Missouri Pacific system:	
Made by cars of the American Refrigerator Transit Company	66.7
Made by cars operated by shippers—	
Armour Car Lines	60.8
Cold Blast Transportation Company	52.4
Cudahy Refrigerator Line	56.8
Cudahy Milwaukee Refrigerator Line	53.9
Kingan Refrigerator Line	76.7
Morris & Company	63.9
St. Louis Independent Packing Company	50.7
Swift Refrigerator Line	61.3
Loaded mileage on the St. Louis-San Francisco Lines:	
Made by Frisco Refrigerator Despatch cars	72.3
Made by cars operated by shippers—	
Armour Car Lines	68.6
Cold Blast Transportation Company	56.6
Cudahy Refrigerator Line	59.1
Cudahy Milwaukee Refrigerator Line	61.5
Kingan Refrigerator Line	67.8
Morris & Company	73.7
St. Louis Independent Packing Company	54.8
Swift Refrigerator Line	62.2
Loaded mileage on New York Central lines:	
Made by cars of the Merchants Despatch Transportation Company	80.6
Made by cars operated by shippers—	
Armour Car Lines	56.6
Cold Blast Transportation Company	51
Cudahy Refrigerator Line	50

Cudahy Milwaukee Refrigerator Line 51
Kingan Refrigerator Line 52
Morris & Company 50
St. Louis Independent Packing Company 50
Swift Refrigerator Line 51.4

It is further shown by the returns that the loaded mileage of the Pacific Fruit Express over the Union Pacific-Southern Pacific lines was 70.3 per cent., and of the Santa Fe Refrigerator Despatch Company over the Santa Fe lines 83.6 per cent.

The figures are taken from the returns to the Commission for the year 1912, which may be considered as a normal year, so far as car supply and movement are concerned.

From figures secured from answers to interrogatories sent out in 1918, the following tables have been compiled:

Year.	Refrigerator mileage reported by carriers.				Refrigerator mileage reported by private owners.			
	Loaded.		Empty.		Loaded.		Empty.	
	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.
1913.....	813,726,169	63.9	459,644,951	36.1	757,107,374	93.1	56,112,042	6.9
1914.....	866,038,169	64.6	474,587,129	35.4	639,729,731	76.7	194,881,338	23.3
1915.....	883,858,538	61.1	562,079,448	38.9	553,218,691	62.0	339,647,637	38.0
1916.....	926,338,951	63.4	534,636,239	36.6	477,133,588	56.7	362,447,157	43.2
1917.....	918,768,791	62.6	548,318,009	37.4	464,603,136	56.6	356,835,725	43.4

Year.	Tank car mileage reported by carriers.				Tank car mileage reported by private owners.			
	Loaded.		Empty.		Loaded.		Empty.	
	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.
1913.....	165,884,990	51.5	156,008,777	48.5	99,406,702	50.7	96,850,771	49.3
1914.....	173,660,758	51.0	166,890,852	49.0	101,871,368	50.3	100,699,158	49.7
1915.....	207,965,764	51.1	199,328,862	48.9	139,912,823	50.7	135,885,317	49.3
1916.....	273,025,719	51.1	261,200,168	48.9	201,185,256	50.6	196,739,973	49.4
1917.....	340,473,778	51.2	324,693,629	48.8	259,634,967	50.6	253,786,582	49.4

The figures are for the private car lines and owners and railroads reporting. They do not contain all the mileage, loaded or empty, made by all the refrigerator or tank cars in the country. They are, however, representative, and may be taken as showing the situation with substantial accuracy.

It will be observed that the loaded and empty mileage made by privately owned refrigerator cars in 1913 is at variance with that of the other years. The reason for this is that the figures submitted for that year by 95 per cent. of those making returns did not segregate the loaded and empty mileage movements. The figures are based on the 5 per cent. that did report such movements, and are, therefore, not reliable, and may be discarded. To a less extent the same situation exists with respect to the year 1914.

It will also be observed that the percentages of loaded to empty movements are substantially the same for the entire period of six years. This shows that whether there be a shortage of cars or not, the empty movement of refrigerator cars under the system of their operation now in effect is substantially constant. The inability of carriers to secure return loads and the insistence of shippers for prompt return of their cars are influences that affect the result.

The percentage of loaded mileage of railroad controlled refrigerator cars is relatively high. In many cases it is higher than the average of all loaded freight car mileage of the country, 69.41 per cent. The loaded and empty mileage of refrigerator cars owned and operated directly by railroad companies was not obtainable, but so far as cars owned or operated by their car lines are concerned, the records show reasonably efficient operation. These cars appear to be used to about the same extent as ordinary box cars. Refrigerator cars are used primarily for perishable freight, but when suitable freight of a general character is available for return loading, they are utilized. Most perishable freight moves from the west, southwest, south and southeast to the northern and northeastern sections of the country. There is very little perishable freight available for return loading. Railroad car lines utilize their cars to as

great an extent for return loading as possible. Private car owners object to return loading of their cars, if by so doing, the return movement is delayed. There are many articles that can not be loaded into refrigerator cars, especially meat cars, because of odor, or because the dampness in the car would not permit of such loading. The tariffs of carriers designate a list of articles that are not to be loaded into refrigerator cars, and also contain general inhibitions as follows:

> Articles not to be loaded in standard refrigerator cars, meat cars or standard ventilator cars: Any freight liable to damage from dampness or rust; and freight the odor of which may unfit the cars for transportation of perishable freight; and any rough or heavy freight that may damage car walls or floors.

Then follows a list of 24 commodities as the principal ones within the restriction above cited. Tank cars are not generally loaded for return movement, and with some exceptions move empty half the total mileage. The Union Tank Line Company serves so many concerns with numerous refineries and stations in all parts of the country that it occasionally happens that loads may be found for movements in both directions. As a rule, private cars designed to transport acids, vinegar, wine, etc., move empty on the return.

PHASES TO BE SPECIALLY CONSIDERED.

In an investigation so general as this, where all questions with respect to the operation of private cars on all railroads of the country are to be taken into account, it became necessary to specify the more important phases of the matter to be considered. In the order that was issued in January, 1918, certain points were designated as those to be given special consideration, and to them the evidence taken at the last hearing was in the main directed. In brief, they include the question of the propriety of a service or separate charge, in addition to the freight rate, when special equip-

ment is transported by carriers; to ascertain, in case a carrier has no equipment of the kind demanded by a shipper, whether the carrier should secure the same from an owner of such car, or whether the shipper should be permitted to make the arrangements with the owner, and thus supply cars for his own use; to determine whether, if private car owners are permitted to continue to furnish cars to shippers and make charges direct to them, the charges so made shall be published in tariffs of carriers; to determine what compensation should be paid by carriers to the car owners, lessor or lessee for the use of cars furnished, and the manner in which charges shall be determined; to ascertain what relation investment in private cars, interest, cost of operation, maintenance and depreciation should bear to the allowance to be paid by the carrier for the use thereof; whether charges for refrigeration should be a stated sum for the service, or named in cents per 100 pounds of freight hauled, or should be based on the cost of the service, including labor, cost and weight of ice and salt, etc.; the propriety of the line-haul carrier performing all refrigeration service and making charges therefor; whether rules and practices of carriers as to minimum weights and charges, mixtures, part lot shipments, return of empty containers, etc., operate to unduly prefer or prejudice any shipper or shippers, or any particular description of traffic; to investigate questions respecting demurrage; and to determine whether the Master Car Builders' Association rules, with respect to private cars, should be filed with the Commission and observed by carriers accordingly.

The different phases of the case will be considered in detail, not necessarily in the order listed above, nor in exact terms as stated, but in such a manner that each will have such discussion as its importance and the facts warrant.

THE DUTY OF CARRIERS.

It is well-settled law that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. The general duty of carriers at com-

mon law, and under the act, is to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations. It has been held that in the absence of discrimination the power to enforce the duty does not reside with the Commission. *Pennsylvania R. Co.* v. *United States*, 227 Fed., 911; *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. In this proceeding the question of where the power resides to enforce the duty is not necessarily involved. In section 15 of the act it is provided that if the owner of property transported directly or indirectly renders any service connected with transportation, or furnishes any instrumentality therein, the charge and allowance therefor shall be no more than just and reasonable, and that the Commission is empowered to determine what is a reasonable charge as a maximum to be paid by the carrier or carriers for the service rendered, or for the use of the instrumentality furnished. An amendment to section 1 of the act, approved May 29, 1917, provides as follows:

> The Commission shall, after hearing, on a complaint or on its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier, and the penalties or other sanctions for nonobservance of such rules.

The Congress has thus recognized the use of privately owned cars in transporting the commerce of the country, and has provided for their control by the Commission through rules and regulations of carriers hauling them.

For more than 30 years privately owned cars have been extensively used to transport commodities in interstate commerce. They came into use originally because the railroads would not, or did not supply them in sufficient quantities to meet the demand. Practically all carriers have refused to furnish tank cars for transportation of oil and other liquids,

or cars with brine tanks and racks for transportation of carcass meat. There are certain exceptions to this rule which will be considered later. Refiners of petroleum oils with substantial unanimity state that as a practical matter carriers could not furnish tank cars in a matter to insure their efficient use. The packers, who are the largest users of refrigerator cars, including meat cars, state that they are perfectly willing that carriers should own all cars used by them, "provided they are insured at all times an adequate supply." The proviso qualifies their acceptance of the principle to the extent of practically nullifying it. If all cars were owned and furnished by carriers, in times of shortage the packers, as well as all other shippers of like traffic, would be entitled to no more than their fair share of all cars available. No class of cars in railroad service is used more effectively than the cars owned by large shippers. They have organizations of men to see to it that their cars move as promptly as possible, both loaded and empty. The carriers of the country could not as effectively handle the entire refrigerator and tank-car equipment as is now done by the intervention of private owners. The car lines have forces of experts to watch the crop prospects and to advise as to the needs of particular sections of the country, to secure cars and see that they are on hand for the transportation of all sorts of products in refrigerator cars. If there is a crop failure in one section of the country, the cars are sent to other sections, and are kept actively in use to the highest degree possible. The oil refiner produces certain kinds of oil and desires to reach certain customers. No carrier could inform itself as to his needs and insure that he would have the kind and number of cars to enable him to conduct his business economically and efficiently. If private ownership or control of cars of particular types results in greater economy and more efficient use, the whole public is to that extent benefited. As before stated, nearly 200,000 cars regularly used in interstate commerce are now held in private ownership. According to the statistical abstract compiled by the Commission for the year ended July 1, 1916, there were 2,313,300 freight

cars of all kinds owned and used by carriers of the country. It is probable that this amount is short about 20,000 of the number owned by carriers on January 1, 1918, and assuming that on that date the total equipment of railroad-owned cars was 2,500,000, it follows that about 8 per cent. of that number is privately owned.

In the beginning, carriers could no doubt have insisted upon their right to furnish all equipment. They did not do so, and in the course of years there has grown up a system of private ownership of such magnitude and importance that it must be reckoned with as an existing condition. Some years ago certain car lines were owned by shippers who received commissions from carriers transporting their traffic. This was unlawful as a concession to such shippers from published rates. No such commissions are paid at this time, nor have there been for many years. It also appears that some years ago carriers paid excessive allowances for use of cars to certain shippers, which amounted to rebates, but so far as this investigation has shown, there are no payments of that character now being made. The handling of private cars is now on such a basis that there does not appear to be any unlawful practice, so far as payments by carriers to shippers are concerned.

There is a demand upon the part of certain shippers of petroleum oil that the Commission require carriers to furnish tank cars on request, and that the supply of such cars be subject to ordinary rules of equitable distribution. The contention is that if the Commission has not the power, it should be given it by proper legislation.

The system of the use and supply of private cars that now exists can not be at once and radically changed, without serious consequences to shippers, carriers and the public. At the hearings an endeavor was made to secure evidence with respect to normal transportation conditions. The abnormal conditions of last fall and winter are admittedly not such as would indicate what would be just and reasonable practices, as a general rule, for carriers, shippers, private-car owners or the public.

HOW SHOULD A SHIPPER SECURE CARS?

As a general principle, a shipper of traffic over the railroads of the country ought not to be required to deal with any other than the carrier. If the carrier has not the kind of a car in general use that is demanded by a shipper, the most simple and direct method is for the former to secure it from some source and furnish it, but the custom has been otherwise with respect to certain kinds of cars. In many cases, shippers are under compulsion to furnish cars by reason of carriers' failure to supply them upon request. In practice, the shipper either buys the cars used by him, or rents them from concerns engaged in the business of supplying cars. If a request were preferred to a carrier for a kind of car it did not own, considerable delay might occur before it could be secured. To a shipper of perishable products or a shipper who is bound by a short time contract, such delay might cause serious loss. So far as the carrier is concerned it can make no difference whether the shipper is owner or lessee. So far as the shipper, or the relation of one shipper to another is concerned, there may be a marked difference between an owner and a lessee.

Some car companies engaged in the business of manufacturing cars and supplying them to shippers for use in transportation have and take a vital interest in the movement of such cars by carriers. They enter into contracts with shippers to supply them with all the cars needed for a certain period, usually a term of years. Men are employed whose duty it is to keep posted as to the location of all cars, so that demands of patrons may be most expeditiously and economically met. In many instances they require junction reports as to passing of cars sent to them, and they collect mileage due and credit it to the lessee's account. There can be no doubt but that this method of handling the business leads to a highly efficient use of cars. These car owners may not, and, in fact, usually do not, have any interest in or control of the lading of the car or its destination, but they find it necessary to follow their cars about, and by all means in their power they attempt to expedite the move-

ments to enable them to meet their contract obligations out of the total number of cars they own. Because of this, they have a special interest in the transportation service rendered by carriers. Shippers realize that through the efforts of such organizations they secure a larger use of the cars they lease, and for that reason find it more satisfactory to lease than to own them. Where single shippers own but few cars, it is not practicable for them to so organize their forces as to secure prompt movement and return of cars. Larger owners have organizations to look after the movements of cars and this promotes their prompt movement en route and through terminals. They have representatives at important junction points who advise as to movements and look after the prompt handling of cars.

As before stated, it is undoubtedly in the interest of all shippers that needed cars should be secured from the carrier direct, but so long as the system of the use of privately owned and operated cars continues to play so important a part in transportation by railroad in this country, and so long as carriers fail to provide themselves by ownership or lease with cars to transport so important a part of the commerce moving over their lines, there seems to be no sound reason why shippers should not continue to secure cars through independent car companies. The need is to secure the largest use of all freight equipment, and the car companies have been an important agency in this regard.

SHOULD CAR OWNERS PUBLISH THEIR CHARGES TO SHIPPERS?

Charges of car owners to shippers range from $15 to $150 per car per month. The lower charges are on unexpired long time contracts and will not be renewed under present conditions. Five years ago, the average rental charge was about $30 per month. In 1917, the average contract was made at $85 per month. It is stated by the General American Tank Car Corporation on argument that the average of all its contracts for the year 1917 was $37.50 per month. The higher average charge is justified, it is asserted by car owners, because of increased cost of materials and labor.

Except as to a few car companies, there is no regularity with respect to charges car owners make for equipment leased or furnished shippers. The amount of the charge seems to be measured by the needs of the particular shipper. During recent months there has been such a demand for cars that owners admit that they have received very high prices for single trips or other short time use. In normal times there is not such demand, and the charges are much less.

The Union Tank Line Company, formerly a subsidiary of the Standard Oil Company, and, under the decree of the Supreme Court, a separate corporation, is the largest owner of tank cars in the country. It owns about 18,000 at this time. Its cars are all used in petroleum oil service, and are for the most part leased to former subsidiaries of the Standard Oil Company. Its charges are uniformly the same to all users of its cars, and its contracts are made for periods of not less than six months. The company undertakes to supply all the cars a particular lessee may need during the period of the contract. In 1912, the charges of this company were as follows: For a car of 8,500 gallons capacity and over, $3 as an initial charge for furnishing the car, and 75 cents per loaded day. That is to say, the per diem charge was assessed when the loading began and continued until the car was made empty. For cars of less than 8,500 gallons capacity, the charge was $2.50 for furnishing the car, and 50 cents per loaded day. On January 1, 1918, the charge was as follows, the change having been made during the year 1917: 1¾ cents per 100 gallons per loaded day, based on the capacity of the tank, plus three times 1¾ cents per 100 gallons for each time the car is loaded. The charge of 1¾ cents per 100 gallons runs from the day the loading is commenced until the tank is made empty. Thus, the charge for 8,000 gallons per day would be, under the new rates, $1.40, as compared with 75 cents under the old rates, and $4.20 for furnishing the car, as compared with $2.50. No figures are at hand to compare in actual practice the new charges with the old, but it will be observed that they are nearly twice as much. It is asserted that increased costs

of all kinds warrant the higher charges. For cars designed for shipments of casing head gas and naphtha, highly explosive articles, the charge is double that for an ordinary tank.

The General American Tank Car Corporation owns about 5,000 tank cars which are leased to shippers for use in general service of transportation of liquids. The larger number of its cars are continuously used for the transportation of petroleum oils, but many of them are of special design and used to transport acids, wines, cottonseed and cocoanut oil, etc. Many of the contracts of this company provide for the payment of rental for a number of years, usually five, when the car becomes the property of the lessee. Its charges are not uniform, that is to say, more will be charged for a wine or an acid car than for a petroleum car, dependent upon the cost of the car, the length of lease, etc. Its representatives testified that for similar cars leased and moved under the same circumstances and conditions, the charges are always the same. Most of the cars of this company are leased for long periods, although it makes occasional short-time or trip arrangements.

The North American Car Company owns about 400 refrigerator cars and 600 tank cars. Most of its refrigerator cars are leased to railroads on a monthly or yearly basis. Leases of both refrigerator and tank cars are made to shippers on contract. The terms do not appear of record.

Tank cars for transportation of cottonseed oil or other seasonable articles are, in the main, used by the owners to transport their own traffic, but they lease them at times when not in their own service for any price they can secure, which, of course, varies with different seasons and the needs of the lessees.

It is important that charges which affect the total amount paid by shippers should be uniform under the same circumstances and conditions. The total charges may and doubtless do affect the sale price of the article, and the consuming public has an interest in them. In other words, the public always has an interest in the transportation cost of articles consumed.

Under the law as construed by the courts, car lines and others engaged in leasing cars to shippers are not common carriers and thus do not come under direct control by the Commission. When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of our power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. The act does not impose on common carriers the obligation to haul private cars in interstate commerce. If private cars are used, they must be under an arrangement stated definitely in tariffs. *Procter & Gamble Co.* v. *C. H. & D. Ry.*, 19 I. C. C., 556, 560.

No one has complained so far as this record shows of the amount of the charges for lease of cars, or that the charges are applied in an unjustly prejudicial manner. As a means of removing undue prejudice or unjust discrimination we have the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. We do not feel that on the facts of this record or under present conditions the requirement should be ordered.

SHOULD A SEPARATE CHARGE FOR SPECIAL EQUIPMENT BE ESTABLISHED BY CARRIERS?

This was one of the questions that was thoroughly discussed at the hearings and is fully considered on brief. The first difficulty is to define "special equipment" or "special car." Carriers define "special equipment" to be that which "does something to the freight," or that which has a value to the shipper over and above the mere hauling, the definition to apply to a car furnished by a shipper as well as one by a carrier. It is stated by carriers that the most important factor to be taken into account in determining whether a car is or is not special is the superior service which it affords the shipper. It is conceded by them that the purpose of a separate charge for furnishing special cars is to reimburse them for the service rendered which is not included in the

freight rate, and to remove any discrimination that may be found to exist because a better car is furnished one shipper than another.

It is insisted by shippers that whether the equipment is or is not special as to its construction has nothing to do with the question at hand. They concede that if the freight rate for the transportation of any article is based upon its movement in a particular kind of a car, and upon request a carrier furnishes one of more expensive construction and one that is more difficult to operate, it is entitled to be paid for the additional service. A familiar illustration of this situation is found in the rates on potatoes from the northwest. Cases involving this point have been decided by the Commission. *Protection of Potato Shipments in Winter*, 29 I. C. C., 504; *Rental Charges for Insulated Cars*, 31 I. C. C., 255. It appears in those cases that originally potatoes moved only in box cars, and that the freight rates were based on that kind of equipment. Later, carriers were called upon by shippers to furnish refrigerator cars. The Commission approved an additional charge for furnishing such cars on the ground that the freight rates were based on movements in box cars, and that the carriers, when they furnished refrigerator cars, were entitled to receive additional compensation because of the more expensive construction of the car and the greater service to the shipper.

It is further contended by shippers that if an attempt is to be made to define special equipment for handling of which the carrier should make a separate charge in addition to the rate for transportation, the real test should be the extent of the use of the particular kind of a car. No doubt a car of a peculiar type when first used might be considered special equipment because of its construction and design. If later that type of car should come into general use throughout the country, and move a steady and heavy volume of traffic, it would lose its special character. It is not contemplated by carriers that every car which is differently and more expensively constructed than a flat or box car should be considered a special car. A coal car is every-

where considered an ordinary car, but there are several types, differing in cost, and requiring distinct loading and unloading facilities. In *United States* v. *Pennsylvania R. R. Co., supra,* the Supreme Court, at page 222, after reviewing the decisions of the Commission with respect to its duty and power to require carriers to furnish cars, said:

> This then was the view of the Interstate Commerce Commission of the duty of carriers and its power over them; that is, that it was the duty of carriers to provide and furnish equipment for transportation of commodities and that this duty might expand with time and conditions, the special car becoming the common car, and the shipper's right to demand it receiving the sanction of law.

It is suggested by carriers that they should be permitted to charge a sum in addition to the freight rate when cars of special design are used to transport articles of any kind. A representative of one of the leading carriers of the country suggested that there should be at least three charges for transportation of certain kinds of traffic. He was of opinion that there should be one charge for shipments in a box car; a higher charge when the same kind of shipments were transported in a ventilator car; and a still higher charge when in a refrigerator car. This contention is not entirely new. In *Re Transportation, etc., of Fruit,* 10 I. C. C. 360, 373, decided in 1904, the Commission said:

> We think it is the duty of the respondent railroad companies to furnish refrigerator cars for the transportation of this fruit. While it is possible that these carriers might at the outset have legally declined to provide this special kind of equipment, they ought not to be permitted to do so at this time. For years they have voluntarily made such provision; and this industry has grown up upon the strength of that arrangement. Such cars are generally furnished in all parts of the country when required for this species of traffic.

> While a refrigerator car costs somewhat more than an ordinary box or flat car, the additional expense is not great. Railroads at this day might as well decline to provide stock cars for the transportation of live stock as refrigerator cars for the carrriage of perishable commodities.

In numerous decisions of the Commission it has been held that the published rates of carriers include the furnishing of refrigerator or other cars of special design. An example is to be found in *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 20 I. C. C., 106. In that case the contention was made by the carriers that the charge for refrigeration should include compensation for the use, and the cost of maintaining a car of that type. In answer to this contention, the Commission, at page 108, said:

> In determining the freight rate this fact has been taken into account; that is, the rate applied on shipments under ventilation has been adjusted in view of the fact that a refrigerator car, more expensive than the ordinary box car, must as a practical matter be employed. Hence, in determining the additional sum which the shipper who has the benefit of refrigeration should pay, nothing should be added by reason of the fact that a car of this type is used.

In substantially all rate cases of any importance that have been considered by the Commission relating to articles transported in refrigerator or other cars of peculiar type, carriers have defended their rates by showing more or less in detail that the commodities are transported in such cars, of greater weight, and more expensive to operate than ordinary cars. These facts thus called to the attention of the Commission have not been ignored in passing upon the reasonableness of the rates in issue in the particular cases. Certain articles were not transported in appreciable quantities, and from certain parts of the country not at all, until after the refrigerator car was perfected, and freight rates were

made with a view to transportation of such products in that kind of a car and in no other. The wide diversity of traffic and the special transportation that many carriers perform would make a car special in one section of the country, or over one railroad, that would, in another section or over other railroads, be an ordinary car. A carrier which transports nothing but lumber would not of necessity own a hopper-bottom coal car; one that hauled nothing but coal need not own a refrigerator car; one that had no live-stock shipments would own no stock cars; and one that transported fruits, vegetables and grain only would not possess a tank car. It was suggested at the hearing that carriers might specify in their tariffs the cars they hold themselves out to furnish, and that all other kinds of cars would be considered special by that carrier. Under the system of through rates in this country, such special charges would result in nothing but confusion in tariff publications and lead to uncertainty in amount of freight charges to be paid by shippers or receivers.

As illustrative of what might be done should a charge be authorized for supplying equipment of a special type, the American Refrigerator Transit Company, on or about February 1, 1918, notified certain users of its refrigerator cars that in the future a charge of $7.50 would be made for furnishing a car. A like notice was not sent to all shippers, but it was stated that it was the intention to make such a charge where shipments do not move under stated refrigeration charges. The American Refrigerator Transit Company is railroad owned, and its charges are all published in the tariffs of its owners and contract lines. The contention is that the subsidiary company acts in a dual capacity, in that it acts as the agent of the carrier in soliciting shipments, and for itself in furnishing cars. The proposed charges have not been collected, or published in the owning carrier's tariffs, but the incident is sufficient to show possible complications, should charges for furnishing certain cars be sanctioned.

As before stated, many of the rates now published by carriers include the transportation of articles in cars for the

hauling of which carriers here assert they are entitled to extra compensation. It would be practically impossible to determine what rates do or what do not include the hauling of commodities in special types of cars. Any attempt to state separate charges of the nature proposed would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight.

BASIS OF COMPENSATION FOR USE OF PRIVATE CARS.

When a shipper furnishes his own car for transportation of articles in common use and which move in large volume, he relieves the carrier of so much of its obligations as a common carrier. This is true whether the shipper furnishes the car as owner or lessee. Carriers recognize this and make allowances to the owner or controlling shipper, as before stated, for the use of such cars. The question here to be considered is as to the basis of the allowance or payment therefor. When this case was first heard, the only power of the Commission to regulate payments by a carrier for an instrumentality of transportation furnished by the shipper was the power given in section 15 of the act to determine what is a reasonable charge as the maximum to be paid by the carrier. This provision was directed to the prevention of rebates by way of excessive allowances to shippers, and has never been considered as granting power to fix a reasonable amount as an initial proposition as payment for the use of the car. The act of May 29, 1917, hereinbefore referred to, grants power to the Commission to fix the compensation to be paid for the use of any car not owned by the carrier.

Carriers contend that the amount paid for the use of shippers' cars should not exceed that sufficient to cover repairs and depreciation, and that therefore some of the allowances are now too high. Car owners contend that the allowance or payment now made for the use of their cars is too low, and that it should be in such an amount as to provide for maintenance, depreciation, cost of operation, taxes, and

a reasonable interest on the investment. To the last contention there is one notable exception, The General American Tank Car Corporation. On brief it is stated on behalf of this corporation that although it is contended by some shippers that ownership and control of tank cars is of no peculiar advantage to them, the position taken is not entirely sound. The shipper who is assured of the exclusive use of a tank car, and consequently of the condition of the tank for the receipt of his lading, enjoys an advantage not afforded by a system in which, if the cars were furnished by railroads, he would not have such exclusive use of the car, and for this advantage the shipper ought to bear some proportion of the cost of ownership and maintenance. It is the opinion of this corporation that the proportion which the shipper should bear must of necessity be arbitrarily fixed, and if the shipper receives enough to cover repairs, depreciation and cost of operation, he would secure adequate compensation. It is the further opinion of this company that in normal times 1¼ cents per mile for the loaded and empty movements of the car would be sufficient to cover the suggested items.

On the other hand, 90 per cent. of the tank-car owners insist that payments for use of cars should be sufficient to cover interest on investment, depreciation, cost of operation, cost of repairs and cost of maintenance, and all elements that may be included to reimburse the shipper for the cost of furnishing a car which the carrier, under the law, is bound to furnish. It is conceded by these interests that while it is the duty of a carrier to furnish the cars, as a practical matter the fulfillment of the duty is surrounded by many difficulties. These tank-car owners prefer to furnish their own cars, and they assert it would be impracticable for carriers to do so. Preserving a car for the character of oil handled on its previous trip enables the refiner of oil to eliminate delays in cleaning and transferring cars around from one railroad to another, delays that would be expensive to the carrier, and which it could not in actual practice prevent. It is more economical and more efficient for the refiner to furnish a tank car, either owning it or leasing it

from some concern, than for the railroad company to own it. A refiner producing two kinds of oil, gasoline and residuum, requires two kinds of cars. Another refiner producing all grades of oil, from the lighter oils down to coke, will require several kinds of cars. The cost of cleaning a car which has been used for fuel oil, in order to make it fit for handling gasoline, is very great. These and other reasons which are are given in detail and might be here repeated, if necessary, have led to the system of private ownership of tank cars throughout the country generally. In fact, carriers as a rule provide in their tariffs that where tank cars are used they must be furnished by the shipper, or that the carrier does not obligate itself to furnish such a car. It is argued in behalf of these tank-car owners that in permitting the refiner to furnish his own cars, the railroad company performs no transportation service, and that the latter is refraining from performing its legal duty because it can not do it efficiently. It is asserted that any advantage that the oil shipper may have from the ownership or control of tank cars is due to his own ability to perform a service for the carriers which they do not perform, and that they could not perform as cheaply or efficiently. The compensation due the owner or controller under such circumstances is the cost to him of the facility furnished. The cost of furnishing a tank car is analyzed from all standpoints, and the conclusion is reached by them that the payment should not be less than 2 cents per mile on the loaded and empty movements.

With respect to payment for use of refrigerator cars, the packers, while not conceding that the payment of 1 cent per mile on the loaded and empty movements is sufficient at this time, are willing to continue on that basis with a view of testing it under normal conditions of transportation. Other refrigerator car owners insist that any allowance or payment below 1½ cents per mile on the loaded and empty movements is unreasonable and unjust. All contend that the payment for the use of the car should be sufficient to cover the cost of operation, maintenance, depreciation and a reasonable return on the investment. It is argued that if a

shipper is forced by a carrier to use his own cars the compensation should be adequate; that if the compensation is not equal to the cost of furnishing the car, the result is that the shipper who has to use his own car is paying more to obtain transportation than the shipper who obtains the use of a railroad car; that the furnishing of a car being a transportation service, the entire cost thereof should be covered by the payment made by the carrier for the use of it; and that any other basis will result in unjust discriminations.

The amounts paid by carriers for the use of tank cars or refrigerator cars does not permit of the operation of any of them at a profit considered reasonable by owners, and has not during any time during the last six years, and some of them were and are operated at a loss, taking into account a return on investment, cost of repairs, maintenance, and depreciation.

It is clearly established that shippers of petroleum oils, fresh meat, packing-house products, and dairy products could not have done the volume of business they have done in the past, or that their plants were constructed to do, except they had possessed themselves of private cars over which they could exercise, and have exercised, control. The refiner of oil or the meat packer could no more do business on an economical and efficient basis without his private cars than he could without his modern equipped refining or packing plant. The private car part of the business has grown with the rest. Doubtless in the beginning demands were made by these shippers that carriers should supply tank and meat cars, but it was quickly demonstrated that business could not be done in the most effective manner were carriers to own or control cars of that kind. As a rule carriers have never furnished these cars, and it has come to be mutually understood that they should not do so. The oil refiner and meat packer demand an adequate supply of cars at all times. It is conceded by shippers that neither an adequate supply nor its efficient distribution can be afforded by carriers. The requirement has been that there shall be the most efficient use of tank and refrigerator cars, which

has been one of the results of private ownership. While this has undoubtedly been of benefit to carriers, it has been of incalculable benefit to shippers as well.

The allowance that shall be paid for the use of private cars under all the circumstances and conditions shown must be considered on the average. There can not be, with propriety, as many different rates of payment as there are owners with varying ability to efficiently handle the cars with respect to mileage earnings, repairs, and depreciation, nor can there be as many rates as there are different kinds and grades of privately owned cars. Representatives of carriers assert that a proper basis is payment for repairs and depreciation. Carriers should at least pay for repairs and such depreciation as occurs while the car is in railroad service. The amount of depreciation can not be determined with accuracy. The attempt to fix a stated basis of allowance for use of privately owned cars would by no means result in justice to all owners or to all carriers. The experience through many years under normal conditions has dictated certain allowances which have been accepted by owners and carriers. Changed conditions have led to an attack upon the allowances now paid by carriers. It has been suggested that the measure of the allowance should be the amount the shipper saves the carrier. In other words, what would it cost the carrier to furnish the particular car; and how much less does it cost the carrier when the shipper furnishes it? This amount is not ascertainable from the record. Doubtless the allowance would vary, if put on that basis, as between different carriers and shippers, and also as between different kinds of cars. No attempt will be made here to fix what shall be a reasonable basis from which the amount of the allowance to be paid by the carriers shall be ascertained. This phase of the case will be considered in the light of past experience and the evidence of record.

The discussion has been chiefly with reference to privately owned refrigerator and tank cars because they are more largely used than any others, but the principles announced

are applicable to all, with certain exceptions referred to hereinafter.

HOW SHOULD THE COMPENSATION BE DETERMINED?

Substantially all parties to this proceeding agree that the mileage basis upon which payments are made for the use of private cars should be continued. A number of private car owners stated that they had no objection to payments on a per diem basis, provided the amount was sufficient to pay the cost to them of furnishing the cars. As before stated, payments by carriers for use of private cars have always been on a mileage basis. In 1902, when carriers changed the basis of payment for foreign cars on their own lines from the mileage to the per diem basis, the question of making a similar change with respect to private cars was considered. It was concluded at the time that payments for use of private cars should not be on a per diem basis for the reason that it is very difficult to establish at all times when a private car is or is not in railway service; that there would be a great temptation to favor one private car line or owner over another by moving cars a little slower for one or the other, or by leaving the cars of certain owners on sidings and forgetting them; and that at the time the per diem was agreed upon as between carriers it was fixed at 20 cents, which was known to be too low, and it would have to be increased. The increased per diem rate would have meant largely increased payments to certain car lines and owners which at the time were not justified in the opinion of carriers generally. Changes in per diem rates are frequent, as heretofore noted, and the amount fluctuates from lower to higher sums, dependent on the car supply of the carriers as a whole. The number of tank and meat cars owned or controlled by shippers are usually dictated by the amount of business each does, and are for the most part adequate for the service. For a short time the per diem was 75 cents per day. On February 1, 1918, it was 60 cents. This amount would materially increase payments

on tank cars and other private cars, and on refrigerator cars as well, except those used for the transportation of fresh meat and other highly perishable food products.

To change the basis of compensation for use of private cars would create great uncertainty as to what the per diem should be, whereas, with the experience of years under the present system, the results from operation may be estimated with substantial accuracy. The private car owner now receives payment for the operation of the car. While standing on a consignee's siding or on the siding of a carrier payments do not accrue. The latter situation is of considerable importance when the necessities of transporting certain commodities are considered. For example, fruit and vegetables of a superior quality and in large quantities are grown near the Mexican border in Texas. It is necessary, in order to meet the requirements of shippers from that region, when the crops are good, to have not less than 3,000 refrigerator cars on hand early in each year, in order that they may receive shipments during an exceedingly short shipping season. Cars are sent down to that region and placed on side tracks awaiting loading. It is not possible to send the necessary number at one time. The cars are sent from all directions, care being exercised to move them empty the shortest distance possible. Some of them may remain on sidings for weeks before being loaded. The same situation exists with respect to shipments of cantaloupes from Colorado, and berries from Louisiana and Arkansas.

Some consideration was given to the question whether charges should be computed only on the loaded movement, on the theory that this might induce more loading on the return movement. Of course, this ought not to affect the amount of the payment. If it is now on the proper basis the change would mean a double charge for the loaded movement. In special movements of private cars for vegetables, canteloupes, berries, and the like, there is nothing to be hauled when the cars are sent forward for loads. At the eastern seaboard there is always a surplusage of empty cars. The predominant loaded movement is to the east

from the west, southeast and southwest. The handling of the empty car causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. It was not claimed by carriers that payments should be made on the loaded movement only.

There is no serious difficulty in making settlement as between owner and carrier on the mileage basis. Under present rules, loaded and empty mileage is equalized as regards routes of movement. That is to say, the shipper is required to give each route, or each carrier in the route, a loaded mile for each empty mile of haul, under penalty of paying rates for hauling empty equipment only, which range from 4 cents to 10 cents per mile. Whether under unified operation, should it become permanent, some other rule in this regard may be necessary, is a matter that can not be determined here. Under normal conditions the mileage basis secures to the owner payment for the operation of his car. That is what he is entitled to and it is that for which the carrier should pay.

Deductions from mileage by private cars through terminals are now made. Mileage is calculated from switching limits to switching limits. On a shipment starting from Chicago for New York, the mileage is computed from the outer switching limits of Chicago to the western limits of the Toledo switching district; then from the eastern limits of Toledo to the western limits of the Cleveland, Ohio, switching district; then from the eastern limits of the Cleveland district to the western switching limits of the Buffalo, N. Y., district; and so on to the outer switching district of New York. This is the usual method of computing the mileage earnings on all private cars. It is stated that the practice of carriers is not uniform, and that some of them, where the shipment moves over one line, compute mileage from switching limits of the point of origin to the switching limits of the destination. It is the general rule not to make payment for the movement through switching dis-

tricts of important points. Many years ago when switching limits were not as extended as to-day, the matter was of no especial importance. To-day it is possible to have a movement through Chicago of over 30 miles within the switching limits, and 10 or 12 miles is by no means uncommon in other cities of the country. Car owners do not urge that payment be made for the use of their cars in switching service. Their demand is that they receive payment for line hauls. This is reasonable, and is not objected to by carriers. The computation of mileage as a basis of payment for private cars should be upon the distance of the haul, with reference to distance tables established by carriers. The practice with respect to such payments should, of course, be uniform.

AMOUNT OF THE COMPENSATION.

It is conceded by car owners that they are not properly entitled to make a profit on their cars used by carriers. They demand, as a rule, that the entire cost to them, together with interest on their investment, shall be covered by payment for their use. A return sufficient to pay all costs, including interest on the investment, has not been realized from the payments or allowances now made by carriers. Returns from representative owners for the year 1912 are shown in table 1 in the appendix. This exhibit does not show the investment in any other property of private car owners than the cars. No account has been taken of investment in repair shops, sidings, etc.

It was not possible to secure exact figures in each instance, but the table may be accepted as representative of the general situation in normal times. Since 1912 the cost of cars and repairs has materially increased, and there has been little change in the mileage earnings. If anything, during 1917 the movement has been less than in previous years because of congestion, embargoes, etc. While the figures are not at hand, priority orders that have been given for ship-

ments of food products to the Atlantic seaboard for shipment abroad have not so materially affected the mileage earnings of the packers during recent years as compared with other private car earnings. Table 2 in the appendix gives the investment, cost of repairs, mileage earnings and depreciation at 5 per cent. of certain representative owners of refrigerator, tank, and other private cars for each year from January 1, 1913, to January 1, 1918. The figures in this exhibit are computed on the basis of the returns made by the owners, except the depreciation, which in each instance has been computed at approximately 5 per cent. on the reported investment in the cars. It is to be observed that the figures may not be exact, because of the character of the returns made by the owners. It is insisted by car owners that 5 per cent. is not sufficient to cover depreciation. The life of the average refrigerator and tank car is from 8 to 15 years. Some kinds of tank cars and other private cars have to be practically rebuilt in a short time, frequently less than eight years. However this may be, the table may be used for the purpose of indicating the representative financial results to owners on the basis herein suggested.

Owners receive larger returns for refrigerator than for tank or other kinds of cars. The reason for this is that perishable freight requires rapid transportation to prevent deterioration. It moves in the fastest freight trains of all carriers. Packers and car lines who are largely engaged in shipping perishable commodities insist on the prompt movement of their cars, both loaded and empty. Tank cars do not usually move with equal rapidity. The shipments are not perishable and do not require expedited movement, nor do they ordinarily get it, except in special cases. Large users of tank cars, however, have organizations to keep the cars on the move as continuously as possible. The packers have branch houses in all important cities of the country to which shipments are made in large quantities. For example, Swift & Company have 450 of such branch houses. The shipments of the packers to New York City and for export constitute about 25 per cent. of the total.

The cost to the carriers of moving tank cars or refrigerator cars has not been determined. The average tank now in use holds 8,000 gallons, and the average load weighs 55,000 pounds. The average load in a refrigerator car weighs about 30,000 pounds. Including the ice, the weight would be about 34,000 pounds. The service of the carrier on the loaded movement of a tank car is greater than on a refrigerator car, and the average earnings are also greater. A proportion of refrigerator cars contain return loads, and tank cars return empty in most instances. The investment in a tank car is about the same as in a refrigerator car, and repairs by the owner to a refrigerator car usually exceed those to a tank car.

As before stated, in all that part of the country east of the transcontinental zone, the payment for the use of a refrigerator car is 1 cent per mile on the loaded and empty movements. In that part of the country east of the Mississippi River the payment for refrigerator cars was increased from ¾ of a cent to 1 cent per mile on October 1, 1917, on the suggestion of the American Railway Association after consideration of a demand therefor by owners. For more than 30 years tank-car users and owners have received ¾ of a cent on the loaded and empty movements.

Owners of tank cars contend that the rate was fixed many years ago when the cars cost about $1,000; and that if the allowance was proper at that time, it is inadequate now when cars, even on a normal basis of charges, cost from $1,500 to $1,600. The cost of repairs and maintenance of tank cars has steadily increased. The same is true of refrigerator cars. As before stated, the average carload of oil to-day weighs about 55,000 pounds. Twenty years ago the average load was about 24,000. In other words, the average load has increased two and one-half times, and the revenue of the carriers per car mile has more than doubled.

The following table gives average cost of cars for each year from 1912 to 1917, both inclusive:

REFRIGERATOR CARS.

	Carrier owned.		Privately owned.	
	Number.	Average cost.	Number.	Average cost.
1912	[1]48,926	[2]$1,182.01	54,582	[3]$864.62
1913	55,184	1,200.18	34,985	929.36
1914	61,281	1,200.41	36,167	958.70
1915	61,075	1,207.05	35,911	1,012.40
1916	61,054	1,240.87	33,531	1,025.20
1917	60,475	1,255.52	36,375	1,099.02

TANK CARS.

1912	9,150	([4])	30,039	[5]$993.21
1913	8,941	$1,186.78	21,566	1,078.66
1914	8,715	1,208.90	22,671	1,097.43
1915	9,158	1,215.01	28,080	1,069.21
1916	9,359	1,221.12	33,222	1,170.68
1917	9,636	1,287.37	44,141	1,370.91

[1] Based on reports from 127 representatives railroads.
[2] Based on 24,549 cars as reported.
[3] Based on 7,718 cars as reported.
[4] None reported.
[5] Based on 15,392 cars as reported.

Cars purchased in the latter part of 1917 cost on the average about $3,700. The marked increase is due to increased costs of material and labor and is not a measure for costs in normal times.

A large owner of tank cars testified that the average cost of tank cars in 1913 was $1,100, and in 1917 prices ranged from $1,650 to $3,755 per car during the earlier and latter parts of the year. He stated that under the ¾ of a cent allowance the average earnings in 1914 were $63.09. The cost of maintenance, including depreciation, plus 6 per cent. on the actual cost less depreciation, amounted to $158.74 per car; that is to say, during the year 1914, the mileage failed to pay expenses and a 6 per cent. return on the investment by $95.65 per car. In 1914, in order to secure a return of 6 per cent. on depreciated investment, and to pay operating expenses, the mileage allowance should have been 1.89 cents; in 1916, 1.65 cents; and in 1917, 1.75 cents. The Union Tank Line Company shows that the average cost of repairs to its cars in 1914 was $65.07, and that depreciation at 5 per cent. was $42.70, a total of $107.77. At 1 cent per mile, the average earnings of its cars would have been

$91.97, or $15.80 less than cost on the basis stated. In 1917, according to returns from this company, the average cost of repairs was $49.07 per car; depreciation at 5 per cent., $42.58 per car; and the mileage earnings were $90.87 per car. It is stated that much of the equipment is new, and repairs are on a minimum basis.

In figures set out in table 1 of the appendix, the earnings of Swift & Company on refrigerator cars in the year 1912 appear. This company may be taken as representative of the packers. The returns from mileage received by them are the highest of any refrigerator cars in private ownership. The following table gives the average earnings and depreciation at 5 per cent. on the average value per car, together with the total for the years 1915, 1916, and 1917:

Year.	Cost.	Mileage earnings.	Repairs.	Depreciation.	Total depreciation and repairs.
1915	$896.36	$191.10	$138.81	$44.82	$183.63
1916	916.34	204.52	158.71	45.81	204.52
1917	890.09	197.51	186.77	44.50	231.27

The average daily movement of tank and refrigerator cars, and, in fact, of any private car, is difficult to ascertain with accuracy. In the appendix to this report, table 3 gives the performance of private cars of different kinds operated for owners or lessees, compiled from reports submitted in 1913. It shows movement of refrigerator cars to be from 39 to 86 miles per day. From other figures in the record, it appears that cars of the packers have the largest daily movement, approximately 75 miles. Some of this apparently rapid movement may be accounted for in part by the fact that products shipped by them frequently move in trainloads from the Missouri River and Chicago to New York, and that empties are returned in the same manner. The cars in trains do not encounter delays at break-up or classification yards. Fruits and vegetables do not ordinarily move as rapidly as fresh meats. It is probable that the average movement of refrigerator cars is from 45 to 50 miles per

day. Fruits and vegetables from California to points east of the Mississippi River move about 60 to 65 miles per day, but the hauls are unusually long, and the movement of them is not fairly representative.

The average daily movement of tank cars is equally difficult to determine. The record shows various average movements of different owners from 15 to 40 miles per day. The average, on the whole, appears to be about 25 miles per day.

Very little evidence was submitted with respect to privately owned coal and coke cars. It was asserted that the increased cost of cars and repairs entitled the owners thereof to a greater allowance than 6 mills per mile now paid. There are a large number of coal and coke cars privately owned in official classification territory. In other sections of the country there are but few that are not furnished by carriers. On this record, what would be a reasonable allowance to the owners of private coal and coke cars, can not be determined.

Live poultry and palace stock cars are specialized to a high degree. It is doubtful if carriers could be required to furnish them. They have, however, developed a large and remunerative traffic, and carriers have always paid owners for their use.

DISCRIMINATION IN USE OF PRIVATE CARS.

Because of their superior organization, and their ability to give carriers tonnage, the leading packers of the country have been able to secure better use of their cars than some of their competitors. These great shippers of perishable articles have used to the fullest extent their splendidly effective organizations to secure prompt service for their cars used in shipments of their products. Smaller competitors who have not, and can not afford to have, such organizations, have secured very much less efficient service from the private cars they own or control.

An Iowa packer who leased 20 cars for shipment of carcass meat in 1917 gave the operation of 6 of his cars as follows:

Shipped.	Days held.	Rental per car.	Earnings.
June 27, 1917	177	$116.46	$16.56
July 19, 1917	149	98.04	39.17
September 12, 1917	68	44.94	14.06
September 16, 1917	106	69.75	37.55
September 19, 1917	101	66.45	51.56
September 21, 1917	111	73.04	36.04
Total		468.68	194.98

It will be noted that the first car was not returned to him for nearly six months. A representative of this packer testified that this car and other cars were not tied up in congested terminals, but were in use for the various periods shown by carriers in hauling traffic for others. He stated that it was impossible to get his cars returned in any reasonable time.

A small packer at Birmingham, Ala., attempted to ship carcass meat to the northeast, including such points as New York, Boston, and Pittsburgh, Pa. An exhibit filed by him shows that cars were not returned to him within 15 days from any point north of the Ohio River, and that they were detained for periods ranging on the average about 30 days, some being held for 66 to 90 days. He was unable to secure enough mileage payments to meet his rental charges. He endeavored to secure cars from the carriers, but when these were once loaded they remained away for long periods and he could secure no others. He was, therefore, unable to continue the business. A packing concern at Cleveland, Ohio, also had trouble in getting cars controlled by it returned to its plant. The failure to return cars to the smaller packers is due to the neglect of a lawful duty by carriers. The obligation to treat each shipper fairly, no matter how small his shipments may be in comparison with those of another shipper, is one carriers can not escape. Whether under the terms of the act the carriers have been guilty of unjust discrimination in the cases referred to, can not be determined on this record. The duty imposed on the carrier by law is to give equal treatment to all shippers who are in position to demand it. Where the same carrier or carriers serve two shippers, who, by their location, the char-

acter of their output, and distance from markets where their products must be disposed of, are in substantially similar circumstances and conditions, the serving carrier or carriers can not lawfully prefer one to the other in any manner whatsoever.

Meat packers everywhere are under compulsion, if they are to ship carcass meat, to supply themselves with cars, and carriers transport them under arrangements with the shippers. If the carriers were required to publish in their tariffs a rule to the effect that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, will be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee, doubtless much of the apparent injustice hereinbefore referred to would be avoided. A rule similar in terms to that suggested was applied by carriers with respect to foreign cars on their lines previous to April 26, 1917, but it was not applicable to private cars.

Shippers of oil in tank cars are required to furnish the cars, and many shippers of perishable products other than fresh meat find it necessary to own or control cars, because they can not in any other manner secure an adequate supply. The suggested rule should apply to all private cars in order to prevent discrimination, and to secure to owners such use of their cars as their necessities may require.

Carriers throughout the country generally have provisions in their tariffs which name rates on petroleum oil and other liquids in tank cars that they are not under obligation to furnish such cars. Other carriers provide that shippers must furnish tank cars. Notwithstanding this many of them have cars which are used in commercial service. For example, the Pennsylvania Railroad system owns 448 tank cars, and rates named for transportation of liquids in tank cars are governed by the official classification, which provides that

> In prescribing ratings in this classification for articles in tank cars the carriers whose tariffs are governed by this classification do not assume any obligations to furnish tank cars.

The Atchison, Topeka & Santa Fe system owns 2,965 tank cars and leases 100, making a total of 3,065. Its rates on articles transported in tank cars are governed by the Western classifiation, which provides that

> Where the classification provides ratings on commodities in tank cars such ratings do not obligate the carrier to furnish tank cars in case the carrier does not own, or has not made arrangements for supplying such equipment.

The Pennsylvania acquired its tank cars many years ago. At first they were operated by a subsidiary company known as the Green Line. It owned about 1,200 cars. In 1902, the Pennsylvania Railroad began operating the cars itself. At that time it had 625 cars. Since about 1880 none of the equipment that was operated by the Green Line or the Pennsylvania has been renewed by purchases of new cars. The cars were purchased when there were no oil pipe lines to the seaboard, and the purpose for which they were acquired was the transportation of crude oil from the Pennsylvania oil fields to the seaboard. On the completion of the pipe line, for a time there was but little use for the cars, but they are now used to transport refined oil. The cars owned are not sufficient to meet the demands of shippers at points on the Pennsylvania lines at any time. It is stated by a representative of the carrier that the number owned nearly meets the demand after refiners have used their own equipment. In other words, it is stated that the railroad owned cars, supplementing those privately owned, nearly meet the demand. In March, 1914, the railroad company owned 495 cars, and at that time they were not sufficient to supply the demands of shippers, even with increased private ownership. It is asserted to be somewhat difficult to make distribution of limited equipment or any equipment for the oil traffic of today, and it is admitted that the Pennsylvania is frequently short of oil cars to meet the demands of its shippers. It is also stated that one of the reasons why the Pennsylvania had not acquired more tank car equipment was because very few railroads had such cars, and those it owned were scattered over the country beyond its control and it re-

ceived no like cars in return. The cars owned by the Pennsylvania are now divided into assignments for various grades of oil. Out of the number owned in March, 1914, 200 cars were assigned to transport refined oil and naphtha; 100 for light lubricating oil or neutral oil; and 143 for heavy or black lubricating oil. A few of its cars are in its own use for the transportation of creosote. The cars are confined to the oil business, no tank cars being furnished by the Pennsylvania for shipment of any other liquid.

The cars owned by this company are of relatively small capacity. That is to say, its equipment on March 1, 1914, consisted of 77 of 5,500-gallon capacity, 163 of 4,500-gallon capacity, and 255 of 3,600-gallon capacity. The newest car it possessed at that time was 33 years old. Of course, the body and trucks have been replaced from time to time during that period. It was stated that the company did not propose to increase its tank-car equipment.

The Pennsylvania has no plan or scheme for distribution of its tank-car equipment. A shipper makes a request for a car, and if the railroad does not have it, he is relegated to some other source of supply. Whatever distribution is made is through the general office in Philadelphia, but not under any defined system. The endeavor was stated to be to make as equitable a division as possible, and, as a general rule, this had been accomplished.

The Santa Fe originally purchased tank cars to carry supplies for its oil-burning engines. Its cars are not used in commercial service except occasionally. At times, however, some of its cars are supplied to shippers on request. There is no evidence that what cars are used by shippers are distributed in accordance with any plan or system. If a shipper makes request for a car and it is available, he receives it. If it is not available, the request is refused. Numerous western carriers have or own tank cars, which when not in use in their own service are furnished to shippers.

These facts disclose an anomalous situation. Carriers who state in their tariffs that the rates they name therein for the transportation of commodities in tank cars do not

obligate them to furnish cars are constantly doing so when it is for their convenience, or when they are able to do so. This situation was repeatedly called to the attention of the carriers during the hearing, but no satisfactory explanation was made by any of them.

One petroleum shipper testified that for some years he had received a supply of cars from the St. Louis-San Francisco, and they suddenly refused to furnish any more at a time when he had contracts to supply customers, and he was unable to secure more than a small share of his requirement from another carrier, and then in uncertain numbers and at indefinite times.

If shipper A should apply to the Atchison, Topeka & Santa Fe for a car, and be supplied with it, and shipper B, at the same point and on the same date, desiring to ship to the same destination, should make a similar application and be refused, it would appear on the face of it that the carrier had favored one over the other. A certain carrier might supply one shipper continuously with cars and relegate his competitor to buying his cars or leasing them. The possibility for discriminatory treatment of shippers is ever present under the existing state of carriers' tariffs. One of the main purposes of the act to regulate commerce is to make uniform, just, and reasonable all published rules and practices of carriers under them.

The situation as respects the Pennsylvania was considered by the Commission in *Pennsylvania Parafine Works* v. *P. R. R. Co.*, 34 I. C. C., 179, but from a different angle. In that case the question was as to the power of the Commission to require carriers to acquire more tank cars when their supply was inadequate to meet the demands of shippers. The Supreme Court in *Pennsylvania R. Co.* v. *United States, supra,* held that such power was not committed to the Commission. A case of discriminatory practices growing out of insufficient equipment was not considered nor passed upon. Doubtless the Commission if it found any unjust discrimination practiced by any carrier flowing from the peculiar tariff situation above described could require the carrier to cease and desist therefrom. This would re-

sult, perhaps, in a refusal to furnish cars to the favored shipper, but would not be a satisfactory adjustment of the matter. In the present state of the law the Commission has power to prescribe reasonable and nondiscriminatory rules for car distribution. Carriers which own tank cars should be required to distribute those it furnishes to shippers in accordance with rules and regulations published in tariffs whereby each shipper who makes reasonable request may receive his fair and proportionate share of the available cars.

Refrigeration Charges.

Investigation of refrigeration charges and rules and regulations governing the service was included in this proceeding because perishable freight requiring refrigeration moves largely in cars not owned directly by carriers, and the service in connection therewith is performed, in many cases, by independent corporations or subsidiaries of carriers. For example, the Pacific Fruit Express performs refrigeration service for the Union Pacific and Southern Pacific; the Santa Fe Refrigerator Despatch for the Atchison, Topeka & Santa Fe; and the American Refrigerator Transit Company for the Missouri Pacific, Wabash, and other contract lines. These are carrier-owned lines. The Fruit Growers' Express furnishes cars and performs refrigeration service for the Atlantic Coast Line, Seaboard Air Line, Southern, Florida East Coast, and other carriers; the Utility Operating & Supply Company owns icing stations at points north of the Ohio and Potomac rivers and east of the Mississippi, and performs icing service at such points; and Swift & Company performs this service at various points in official classification territory. The refrigeration and reicing charges of all these companies are published in tariffs of carriers, and such charges are generally collected by the latter from shippers and remitted to the companies performing the service.

As a rule, charges for refrigeration of fruits and vegetables are in stated amounts per car, per mile, or per package, for the entire service from origin to destination. There

are exceptions to this rule which need not be considered in detail. It is also a rule that charges for refrigeration of fresh meat and packing-house products are based on a rate per ton of ice and salt furnished. This statement applies to substantially all shipments east of the transcontinental zone. From Missouri River territory to north Pacific coast, Spokane, and Montana territories, the charges are based on a stated sum per car for the service. *Westbound Transcontinental Refrigeration Charges,* 34 I. C. C., 140. Practically all dairy products, including eggs, dressed poultry, butter, oleomargarine, and cheese in certain territories move under tariffs which name the freight rates for transportation, including refrigeration. In other territories they move under charges for the ice furnished or under stated charges.

The rates for fruits and vegetables are named in stated amounts for the through service. The car line which receives the charge is required to pay certain carriers for the ice they furnish. For example, there is a stated refrigeration charge on oranges from the Pacific coast to New York City; a shipment from Los Angeles, Cal., to New York City via the Santa Fe and Erie is handled to Chicago, so far as refrigeration is concerned, by the Santa Fe Refrigerator Despatch Company; from Chicago to New York, the refrigeration is performed by the Erie Railroad Company; the Santa Fe Refrigerator Despatch Company collects from the shipper through the carriers the through refrigeration charge from origin to destination, and pays the Erie $2.50 per ton for the ice it furnishes from Chicago to New York. The same situation obtains on a perishable shipment handled by the Fruit Growers' Express from Jacksonville, Fla., to Buffalo, N. Y. The car line receives from the shipper through the carriers the published stated charge from Jacksonville to Buffalo, and performs the refrigeration service from Jacksonville to Potomac Yards, Va., both inclusive. North of Potomac Yards, the railroad which performs the refrigeration service receives $2.50 per ton of ice furnished from the Fruit Growers' Express.

Thus the car lines engaged in furnishing refrigeration fix a rate based on the cost of the entire service, but carriers furnish, in many instances, a large part of the service, and are paid for the amount of ice furnished.

In 1914, 151 railroads reported that they owned and operated 1,347 icing stations. During the same year Armour interests operated 29, Swift & Company 6, and 4 were jointly owned by Swift & Company, Armour & Company, and Morris & Company. The exact number now owned and operated by carriers and others does not appear, but it is stated that there has been no substantial change since 1914.

Rates charged for ice and salt furnished for shipments of perishable freight vary in different sections of the country. Fresh meats require that the ice be crushed and mixed with salt, and fruits and vegetables do not require crushed ice or salt. The rate east of the Mississippi and north of the Ohio and Potomac rivers is $2.50 per ton of ice furnished. If salt is required, it is furnished free. This rate is applicable to shipments of all commodities in case a separate charge is made for refrigeration or reicing. In other sections of the country charges for refrigeration of fresh meats and packing-house products are generally $2.50 per ton of ice and 40 cents per 100 pounds of salt, with a minimum charge of $1.25 for ice and 40 cents for salt for each car reiced in transit. The charge for ice furnished by railroads for shipments of fruits and vegetables is frequently higher at the same station than for shipments of fresh meats and packing-house products. At Springfield, Mo., on the St. Louis-San Francisco, the charge for reicing fresh meats and packing-house products is $2.50 per ton of ice, while the charge for other perishable commodities is $4 per ton. The same situation obtains at Mounds, Ill., on the Illinois Central, at points on the Ohio River, Birmingham, Ala., and other points in the southeast.

Some of the great packing concerns of the country now operate directly, or through corporations they control, a number of icing stations at which they re-ice their own

shipments, as well as those of competitors, and any perishable commodities that require re-icing en route at the particular station. These icing stations are operated by Swift & Company and by the Utilities Operating & Supply Company controlled by Armour and Company. Some of them are owned and operated by one company, and some are owned in partnership, as above stated. Icing service in official classification territory, including New England territory, and in Canada, is performed by the packers or by corporations they control, at Michigan City, Ind.; Benton Harbor, Port Huron, and Del Ray, Mich.; Chicago Junction, and Columbus, Ohio; Havelock and Coteau, Canada; Manchester and Karner, N. Y.; Mahoning and Altoona, Pa.; Newport, Vt.; and Nashua, N. H. At some of these points regular icing stations are operated, and at others there are simply icing platforms. In addition to those named, the Fruit Growers Express operates a number of stations south of the Ohio and Potomac rivers, chiefly in the southeast, which are used to ice shipments of fruits, vegetables, and berries.

At all stations in official classification territory, with two exceptions, where reicing is done for shipments of fresh meats by the packers for railroad companies, the latter pay the former $2.50 per ton of ice furnished. At Altoona and Columbus, the Pennsylvania lines have an arrangement with the Utilities Operating & Supply Company for supplying ice and salt for shipments of perishable freight. At these points, the railroad company pays the operating company for reicing any carload of fresh meats $2.50, irrespective of the amount of ice and salt furnished. For shipments of other perishable freight, the railroad company pays $2.50 per ton for the amount of ice actually used and 50 cents per car in addition for the labor of placing it in the bunkers. The average amount of ice required at Altoona is from 1,200 to 1,400 pounds, for which the railroad company, at the published rate of $2.50 per ton, receives from the shipper from $1.50 to $1.75. Under such an arrangement, it appears that the railroad company loses

from 75 cents to $1 per car on every car containing fresh meats that is reiced at Altoona. On each car of other perishable freight reiced at Altoona, the railroad company loses 50 cents per car, assuming that it could furnish the ice itself at $2.50 per ton, which is not free from doubt. The same condition exists at Columbus. Rates for reicing are published in tariffs of the carriers, but the icing stations operated by the packers are competitive with similar stations operated by carriers. There can be but one conclusion reached from a consideration of these facts, and that is that the packers have so located their icing stations that in the past whatever rates they have been willing to accept for the service of reicing control the rates for reicing with respect to the movement of fresh meats and packing house products. The largest volume of shipments of these commodities is from west to east, with a considerable movement to the southeast. Take for example a shipment from Kansas City to the southeast. The short route would be over the St. Louis-San Francisco, through Springfield, Mo., where there is a railroad icing station. A competitive route would be through East St. Louis, Ill., where there is an icing plant operated by the Armour interests. Whatever rate for reicing is made at St. Louis must be met at Springfield. The same competition affects rates at Memphis and Birmingham. A shipment from Chicago to the south or southeast might be routed through East St. Louis or Columbus, at each of which points icing plants controlled by Armour and Company are operated. Railroad icing stations in competition must make the same price on pain of losing the business. It is asserted by the packers that over the northern route $2.50 per ton of ice furnished is ample to cover all costs in connection with reicing, and that competition forces the same rates from west to east and to the southeast via all crossings and all routes. One answer to this is that $2.50 per ton of ice furnished, including free salt and the labor of crushing the ice and putting it in the bunkers, is not now sufficient to pay the costs even by the northern routes. Exhibits filed of record show

that in 1913 certain icing stations operated by the packers and their subsidiaries in official classification territory yielded a profit. Figures were not submitted showing results in more recent years.

It is insisted by carriers generally that it is necessary, in order to prevent discrimination, that charges for refrigeration should be a stated sum in cents per 100 pounds of freight transported. That is to say, that carriers as a rule in this proceeding advocate that refrigeration charges should be a stated sum in cents per 100 pounds of freight hauled in each car, based on the carload minimum; and that for less-than-carload shipments there should be a stated sum for the entire service in cents per 100 pounds for the tonnage hauled, with a minimum charge per shipment which should be the equivalent of the less-than-carload charge for 100 pounds.

The railroad-owned car lines are of the opinion that the refrigeration charge should be either based on the freight transported, or on a per car basis.

The Louisville & Nashville Railroad Company desires to continue its charge based on the amount of ice furnished, even though it results in performing the service at cost or less, on the theory that by so doing it may encourage the growth and production of perishable products on or adjacent to its lines.

Carriers give as their reason for desiring that refrigeration charges be based on the tonnage of freight hauled, the following: (1) Carriers cannot be expected or required to sell ice as a commodity, they are required to furnish refrigeration service; (2) a stated charge places unlimited responsibility on the carrier, with freedom to give adequate and efficient refrigeration in transit without restrictions from shippers; (3) the stated charge promotes the conservation of food products by preventing waste; (4) it insures parity of rates and equality between shippers and shipments; (5) a charge based only on the cost of labor and ice and salt does not give the carrier compensation for the various other factors which form legitimate parts

of the gross cost of furnishing refrigeration; and (6) a stated charge is known in advance, and is of convenience to the shipper in enabling him to quote prices f. o. b. destination.

It is stated of record that there are now no stated refrigeration charges published based on the weight of the freight hauled. There are charges now in effect based on the package and distance of the haul. The Commission has approved stated charges on a per car basis in transcontinental service. *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 20 I. C. C., 106; *R. R. Com. of Cal.* v. *A. G. S. R. R. Co.*, 32 I. C. C., 17; *Westbound Transcontinental Refrigeration Charges*, 34 I. C. C., 140.

Shippers were of opinion that it would not be possible to fix refrigeration charges with reference to the lading of the car, without discrimination; that such charges would require a shipper to pay for maximum refrigeration in a car furnished by a carrier twice as much in the case of a 60,000-pound load as for 30,000-pound load; and that the charges would vary with each load shipped, although the service rendered by the carrier, so far as the refrigeration is concerned, would be the same with respect to each load.

A representative of the Refrigerator Car Lines Committee of the National League of Commission Merchants of the United States, interested in fruit and vegetable shipments, testified that refrigeration charges for short and medium hauls have always been based on the amount of the ice furnished, where the carrier renders the service. It is contended that this is a simple and direct method of charging the shipper for what he receives, and remunerating the carrier for what it furnishes. It is further insisted that no workable or equitable plan for applying refrigeration charges on the basis of the freight hauled could be devised that would fit the varying conditions of transportation of perishable commodities for short or medium distances. Among the conditions named are changing temperatures, different costs of ice, nature of the shipments, and the various differences in hauls. It is insisted that the present

rules maintained by carriers with respect to comparatively short hauls, by which the weight of the ice and when and where it is furnished, all appear on the freight bills, is more satisfactory than the payment of a stated charge, which includes no information as to the amount of ice used by the carrier or where it is placed in the bunkers.

Shippers of fresh meats and packing-house products insist that it would not be just, economical, or in the public interest that stated charges for refrigeration of such products should be established and maintained by the carriers of the country. It is asserted by them that most of the services performed by carriers included in stated charges approved by the Commission and applied to their commodities, are performed by shippers of fresh meats and packing-house products, and that certain other elements of cost which might properly be included in stated charges, if they were to be established *de novo*, have already been included in the freight rates. It is conceded by Swift & Company on brief that the carrier is entitled to a fair charge for ice furnished, such charge to include all items of labor, interest, etc., on the investment in the icing plant; and that if the present charges are not sufficient to include the cost of ice and the labor of putting it in the bunkers, the cost of salt, and other items of cost, the carrier is entitled to a higher charge.

It is further asserted that in most instances where stated refrigeration charges now exist the carrier furnishes the car; that with respect to shipments of fresh meats and packing-house products the shipper is required to furnish the car; that where stated charges prevail the carrier precools the car; that in shipments of fresh meat and packing-house products the shipper precools the car and it would be impracticable for the carrier to perform such a service; that where stated refrigeration charges are imposed the carrier performs the initial icing; that in shipments of fresh meats and packing-house products the shipper performs the initial icing, and it would not be practicable for the carrier to do so; that under stated refrigeration charges the cost of repairs to ice bunkers and the cars are

borne by the carriers; that with respect to shipments of fresh meats and packing-house products all repairs are borne by the shipper and owner of the car; that in cases where stated refrigeration charges have been approved by the Commission allowance was made for the cost of hauling the ice; and that such cost has been included in the freight rates on fresh meats and packing-house products.

It is contended that none of the elements ordinarily considered as going to make up a stated refrigeration charge, except the cost of ice and salt, and the labor of putting it in the bunkers, is proper to be charged against shipments of fresh meats and packing-house products.

It is argued by shippers that haulage of the ice, cost of supervision and repairs to bunkers and cars, and cost of extra switching were taken into account in fixing rates on fresh meats and packing-house products. For example, it is stated on brief that extra switching is an item for which the Commission allowed $1.75 per car in passing on the reasonableness of stated refrigeration charges in transcontinental service. *Arlington Heights Fruit Exchange* and *Railroad Commission of California Cases, supra.* It is insisted that this is an item already included in the freight rate on fresh meats and packing-house products moving under cost of ice and salt reicing charges; that by reference to the testimony and exhibits of the Commission's records in the *Eastern Live Stock Case,* 36 I. C. C., 675, and *Fresh Meat and Packing House Product Rates,* 38 I. C. C., 665, it will be found that switching to ice houses and weight of ice transported were elements upon which evidence was introduced by the carriers in support of increased rates and which were considered by the Commission. In the first case the Commission approved a rate of 47.5 cents per 100 pounds from Chicago to New York, as proposed by the carriers. Attention is also called to the fact that the rate then approved has been increased to 55 cents by order of the Commission dated March 12, 1918, in which was vacated the suspension of certain proposed increased rates in Investigation and Suspension Docket No. 1124, *Eastern Live Stock—Fresh Meat Case.*

These shippers further contend that refrigeration charges should be determined from a practical and economical standpoint, the nature of the product, the conditions under and the seasons in which it moves, the character and amount of refrigeration required, and the most economical way of furnishing it from the standpoint of the carrier, shipper and public. It is asserted that where carriers are called upon to furnish refrigeration, as in the case of fruit, berries, and vegetables from scattered stations and for short periods of time during the warm months when maximum refrigeration is required, a stated charge for the entire service is proper and just; and that where it is necessary for a shipper to precool and reice at his plant year-round shipments from cold-storage plants, such as fresh meats and packing house products and dairy products, and where, both from a practical and economical sta lpoint, such precooling and reicing should be borne by the shipper, the charge for reicing at various stations enroute should be based upon the cost of ice and salt furnished. It is further insisted that in regard to fresh meat, packing house and dairy products, the character of refrigeration required varies with different seasons of the year, the conditions under which they are shipped, and the nature of the commodities. Cheese, eggs, butter, and the less perishable packing house products, during about one-half the year, require no icing en route. The maximum refrigeration with respect to these commodities is only required in the warmest months of the year. It is contended that if a stated charge per car or per 100 pounds is established by carriers, it would necessarily be fixed high enough to cover maximum refrigeration, which would burden the traffic with charges for service not performed or required.

Attention is called to the fact that stated refrigeration charges were first established for transcontinental shipments which move great distances through varying temperatures and changing conditions. It is insisted that stated charges for refrigeration of fruits and vegetables are proper because the entire service is performed by the carrier or

agent from origin to destination; that such shipments are not precooled as a rule, and the service is an entire service, including the furnishing of the car, initially icing it and reicing it en route; and that the service from beginning to end is a carrier service for all items of which payment should be made. In shipments of fresh meat and packing-house and dairy products, shipments are made from cooling stations, and the initial icing and reicing is done by the shipper. A few years ago dairy products were shipped without precooling, but at this time and during recent years the commodities are precooled before being loaded into cars at central stations or concentrating points erected for the purpose and maintained at the expense of the shipper. *National Poultry, Butter & Egg Asso.* v. *B. & O. S. W. R. R. Co.*, 43 I. C. C., 392, 399.

Under the present practice at packing plants, empty cars are delivered in receiving yards. They are there thoroughly inspected and washed out and, if necessary, disinfected by a force of men employed for the purpose. If cars are found to be in good order, and they are clean, they are switched to the icing sheds usually the evening before loading. The bunkers are filled with crushed ice and salt. The next morning they are switched to loading platforms and loaded with fresh meat or other articles. After loading, the bunkers are again filled with ice and the cars are ordered forward. It is insisted that icing facilities of carriers at packing centers are limited and at some distance from the loading platforms of shippers, and that there would be a waste of time and ice should carriers undertake initial icing and reicing of fresh meats and packing-house products. It is further stated that at this time carriers could not secure facilities adjacent to plants of meat packers without enormous expenditures of money; and that if such facilities were secured the work could not be so economically or efficiently done as now. Some of the carriers recognize this situation and assert that the service might be provided for in a stated charge, and an allowance paid to the shipper for precooling and initial icing. Because of the varying

degrees of initial preparation of cars for loading of various products at packing plants, during different seasons of the year, it is doubtful if any allowance could be agreed upon or prescribed that would be just and reasonable in all cases.

It is to be remembered that with respect to shipments of fresh meat and packing-house products, charges in all that part of the country east of the transcontinental zone are based on the weight of the ice or ice and salt furnished. The service rendered by carriers with respect to fresh meat and packing-house products and dairy products is reicing, and not refrigeration in all that the latter service implies. The plants of carriers about the country are reicing and not precooling or refrigeration plants. Some car lines, such as the American Refrigerator Transit Company, have cooling stations where commodities may be stored, but they are for the use of the company to protect shipments en route, or the articles are kept under refrigeration at a charge to the shipper pending disposition. There is no doubt that shippers of fresh meat and packing-house and dairy products are in position to best prepare cars for initial icing and reicing before they are tendered to the carrier for transportation. Needs in this respect as to different articles are peculiarly within shippers' knowledge, and under the practice that has obtained for more than 30 years, they have fitted their plants to do the work effectively and economically.

The statute contemplates that carriers may ice in transit as well as perform the entire refrigeration service. The language of the act is that transportation shall include "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported." In speaking of precooled shipments and the preparation of cars for shipment in *Arlington Heights Fruit Exchange Case, supra,* at page 118, the Commission said:

> This service should be performed in the most economical manner and it is evident that the ice can best be supplied by the same parties who load the car

and prepare it for shipment. The filling of the bunkers with ice is a part of the preparation of the car for shipment and not a part of the transportation service rendered by the railroads.

There are some practices connected with reicing service now performed by carriers with respect to shipments of fresh meat, packing house and dairy products, that should be changed. The larger meat packers are engaged to a considerable extent in shipping dairy products as well as products of their meat-packing plants. As heretofore explained, considerable reicing service in official classification territory through which shipments pass on their way from west to east and southeast, is performed for the railroad either directly by the packers or by corporations they control. Whenever transportation service of this character is farmed out by the carrier to a shipper, who renders the service with respect to his own shipments, as well as those of competitors, there may be, and there quite likely are unlawful results. A meat packer located on the Missouri River, and by no means an insignificant concern, measured by the volume of its shipments, complains vigorously that reicing performed by a competitor at an interior point in official classification territory is not satisfactory, and that its competitor has access to the billing and is advised of the character of the shipments and to whom they are made, contrary to the provisions of section 15 of the act. The evidence is not clear as to particular instances of improper icing, but there can be no doubt that access to the billing of a shipper by another and a competitor is unlawful. If the shipper who renders the service makes a profit therefrom, there at once arises the question whether such profit does not amount to a concession to him from the rates he pays on his own traffic.

Aside from these considerations there is dissatisfaction and unrest amongst competing shippers when disputes as to the amount and character of icing is referred to one of them who rendered the service. This situation obtains when the icing is done by a corporation controlled by a

competitor as well as when it is done directly by the competitor. Of course, there can be no valid objection to carriers doing by an agent what they may do themselves, where such agent is not a shipper or otherwise interested in transportation of the articles with respect to which the service is rendered.

This record does not contain evidence sufficient to determine what would be a reasonable charge for service of reicing fresh meats, packing house, and dairy products, but it does indicate that it is now being performed by carriers at less than cost. Charges for the service should be upon a just basis considering the costs proper to be included such as salt, ice, labor, etc., together with a reasonable profit.

DEMURRAGE ON PRIVATE CARS.

Under the existing tariffs of carriers private cars are made the subject of demurrage when standing on private tracks of owners. It is agreed by both carriers and owners that tariffs should be so worded as to exempt a private car from demurrage under such circumstances. It was stated that provision would have been made some time ago for such exemption except for the difficulty of determining who was the owner of the car. It was agreed that a shipper who leases a car for a term is to be considered the owner during such term, and that a stencil mark on the car as defined in tariffs should be conclusive as to ownership for purposes of exemption from demurrage.

Some private car owners insist that they are entitled to a part of the demurrage accruing on private cars held by consignees. This is not the attitude of owners generally. Demurrage is a penalty for detention of cars, and is enforced in accordance with tariff provisions to keep them moving. This is as important to private car owners as to the railroads and everyone else. The records of car placements, etc., are kept by the carriers, and they make the collection in the interest of the entire shipping public, and the charges are rightfully retained by them.

MASTER CAR BUILDERS ASSOCIATION RULES.

The Master Car Builders Association is an organization of car owners, both private and railroad. The association first met in 1864, when a number of men connected with car departments of railroads came together to discuss problems that had arisen in freight-car construction. It was organized in 1867, when the first regular meeting was held and by-laws were adopted. The organization did not become an effective agency in car construction and repairs until 1887, when the first book of interchange rules was adopted and published. The purposes of the organization are—(1) for increase of knowledge on the part of members relative to freight-car construction and maintenance; (2) to promote uniformity in freight-car construction and interchangeability of detail; (3) to improve freight-car construction in reference to safety and other details; and (4) to develop rules to adjust mutually the differences of railroads or members of the association in connection with freight-car maintenance and interchange.

The by-laws provide that a member of the association shall be entitled to one vote for each 1,000 freight cars owned. The affairs of the association are controlled by an executive committee elected by the members. Various standing committees are appointed by the executive committee to consider and report to the executive committee or the association at its annual meeting on the different questions that are presented to them. For example, there is an arbitration committee the business of which is to adjust disputes that may arise under the rules.

A code of rules governing the condition of and repairs to freight cars for the interchange of traffic is printed and circulated from time to time as occasion requires, or when material changes in the rules are made. Rules are provided for the care of freight cars off the line of the owning carrier, for interchange of such cars, with specifications as to construction of cars and parts. In short, the rules go into detail with respect to every phase of construction and repairs, giving prices to be charged for parts used in

repairs, and prescribing how bills shall be made and rendered to owning carriers.

Many owners of private cars conduct their own repair shops, where major repairs are made. For running repairs owners have to rely on the repair shops of railroads.

During the hearing private car owners made complaints which were chiefly directed to the fact that carriers did not render bills for repairs promptly; that evidence as to improper repairs, or repairs that had been charged for but not made was not permitted to overcome the statement of the repairing carrier; that cards formerly attached to cars showing repairs made at the time were not now sent with the cars; and that private car owners did not have representation on the executive or arbitration committees.

There is no serious complaint as to the rules regarding the making of and charges for repairs. The general disposition of car owners was to conform to the rules if they are faithfully observed. Some private car owners desire that the Commission require carriers to publish the rules in their tariffs and have them observed accordingly. Aside from the question of jurisdiction of the Commission over operations of carriers in this respect, carriers object to such filing on the ground that the effect would be to set the rules as they now are so that necessary changes could not be promptly made. Application to the Commission for permission to make changes which might be required would delay operation, and complicate a system which as a whole has operated satisfactorily. Many private car owners were not in favor of the publication of the rules in tariffs.

A representative of the Master Car Builders Association stated at the hearing that there appeared to be no objection to returning to the practice of attaching repair cards at the time the repairs are made to the cars of private owners, provided that the bill was not nullified if the card was lost or destroyed. To this, car owners agreed, and it is suggested by them that there be attached to their cars a steel pocket or other receptacle in which the repair card might be placed. The representative of the association also stated

that there is no good reason why representatives of private car owners should not be on all committees of the association, including the executive and arbitration committees. He further stated that every effort would be made to induce carriers to render repair bills more promptly, and that disputes as to improper repair or repairs charged for but not made would and should be decided by the arbitration committee under the facts of each case presented and in accordance with the weight of the evidence.

These suggestions were approved by the private car owners, and if adopted many troublesome and harassing disputes as to bills for car repairs will be at an end.

MIXING AND FOLLOW LOT RULES.

The rules governing mixtures of shipments and follow lots now in effect in different sections of the country are not uniform. These rules should not be different when the traffic is transported in privately owned than in railroad-owned cars. Considerable testimony in this regard is devoted to a discussion of the mixing rules in official classification territory applicable to shipments of the meat packers. Practically all shipments by the packers are made in their own cars or in those of their susidiaries. Because of this the rules specially applicable to them were made an issue in this proceeding.

In addition to rule 10 in the official classification, which is the general mixing rule, carriers in the territory governed thereby have, by exceptions to the classification, published three separate rules applicable to articles shipped by the packers. Under these rules different combinations may be made of fresh meat and packing-house products, or of packing-house products, so that different rates per car or per article may be paid for the transportation. It is perfectly clear that the maintenance of so many rules applicable to shipments from one source complicates the billing and renders it a matter of no little difficulty to determine the charges to be applied to the different articles in each mixture. It is not plainly established of record whether the mixing rules in

this territory operate to discriminate unduly against any particular shipper or shippers or any particular description of traffic. It was suggested on the record that such discrimination is possible under the rules.

Mixing rules in the other classification territories are different in many material respects from those in official classification territory as applicable to the same articles. The same thing is to be said with respect to follow lot rules. It is not necessary, however, to consider these rules further in this proceeding, or to suggest what action should be taken with respect to them, for the reason that the matter is now having consideration of a special committee of experts with a view to suggesting and having adopted by carriers rules as to mixed shipments and follow lots, among other things, that shall be clear, direct, and applicable throughout the entire country.

When this case was originally heard, meat pans and other appliances used by the packers for the transportation of packing house products or other products shipped with carcass meat were returned to the point of origin without charge. Charges are now made for such shipments under proper tariff provision. Hooks for the carriage of carcass meat are returned free when properly packed and sent over the line of the transporting carrier.

SHIPMENTS OVER THE ATLANTIC COAST LINE.

When this case was first heard in 1913, shippers of fish, fruit, vegetables, and berries submitted considerable evidence with respect to the condition of cars furnished and the movement of them from points on the Atlantic Coast Line in Florida, Georgia, and North Carolina to northern points. More and better cars and reasonably acceptable service were furnished after the original hearing, and at subsequent hearings no complaint of the service was made. It is assumed that the complaint has been satisfied. At the time of this complaint the cars were furnished by Armour Car Lines under contract with the carrier. At the present time a similar contract is being carried out by the Fruit Growers Ex-

press. A carrier may make such a contract, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers.

MINIMUM WEIGHTS.

Little evidence was submitted with respect to minimum weights on shipments of perishable freight transported in private cars. There is no basis for a finding with respect to this matter. In addition to this minimum weights are inextricably involved in mixing rules, and will doubtless be considered by the committee above referred to.

CONCLUSIONS.

Under all the facts and circumstances shown of record, we find:

1. That as the situation now exists, and under the circumstances and conditions shown of record, shippers may continue to lease cars to transport their shipments from sources independent of carriers by railroad.

2. That a charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car less expensive and not so difficult to operate.

3. That payments should be made by carriers on the basis of the loaded and empty mileage, and that mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts.

4. That there should be no increase in the present payment for use of refrigerator cars and so-called meat cars for transportation in that part of the country east of El Paso, Tex., Albuquerque, N. Mex., and Salt Lake City and Ogden, Utah.

5. That the present payment of ¾ cent on the loaded and empty movements for the use of tank cars of all kinds

by all carriers by railroad should be increased to 1 cent per mile for the loaded and empty movements; that the increased allowance should be paid for the use of live poultry cars, palace stock cars, heater cars, and that under the facts here shown the increase should not apply to stock cars, coke cars, coal cars, rack cars, flat cars, box cars, or pocket cars, although they may be privately owned or leased.

6. That carriers should publish in their tariffs a rule that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee.

7. That where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars.

8. That re-icing charges on shipments of fresh meat and packing-house products and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; that the carriers only should perform the service of reicing and make charges therefor; and that shippers of these products should not be permitted to perform the service of reicing their own and competitors' shipments en route, either directly or through corporations controlled by them.

9. That tariffs of carriers to be so changed that private cars standing on the private tracks of owners shall not be subject to demurrage charges.

10. That the Master Car Builders Association rules be not filed in tariffs of carriers; and that suggestions made at the hearing as to modifications in rules and practices be adopted by the association.

With respect to the proposed changes in Master Car Builders Association rules as agreed to and proposed at the hearing it is assumed they will be promptly acted upon. It is also assumed that carriers will no longer permit the packers or others by themselves, or through corporations

controlled by them, to re-ice their own shipments and those of their competitors en route, and that the carriers will proceed promptly to equip themselves with proper icing stations to perform the service enjoined upon them by law. It is further assumed that proper tariff rules will be promptly published with respect to distribution of tank cars owned by carriers. A rule should also be incorporated in tariffs of carriers at an early date to the effect that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee. As there was no objection to the computation of mileage on distance tables that shall show the mileage of private cars based on the total haul, with the exception alone of switching movement, it is assumed arrangements will be made by carriers accordingly.

With respect to the other conclusions and findings an appropriate order will issue.

APPENDIX.

TABLE 1.—*Mileage received by representative refrigerator, tank, and other private-car owners for the year 1912, together with a comparison of the total of repairs and depreciation computed at 5 per cent on the investment in cars, with the mileage earnings for that year.*

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Arms Palace Horse Car Co.	441	$754,655	$33,104	$40,577	$37,733	$78,310	$45,206
Chicago, New York & Boston Refrigerator Co.	845	730,966	132,047	37,828	37,548	75,376	*56,671*
Doud Stock Car Co.	1,558	545,300	60,034	74,080	27,265	101,345	41,311
German-American Car Co.	1,020	1,100,700	78,670	39,319	55,035	84,354	5,684
Lemac Carriers Co.	200	239,934	18,752	16,314	10,000	26,314	7,562
Mather Horse & Stock Car Co.	10,601	8,063,875	127,211	440,415	403,194	843,609	[2]716,398
Streets Western Stable Car Line	7,226	4,134,236	332,690	338,455	206,712	545,167	212,477
Union Tank Line Co.	11,881	12,918,480	797,868	669,588	645,924	1,315,512	517,644
Western Heater Dispatch	546	567,556	57,391	15,939	28,378	44,317	*13,074*
American Refrigerator Transit Co.	2,784	3,171,722	427,903	279,414	158,586	438,000	10,097
Armour Car Lines	15,206	11,878,007	2,293,282	1,063,144	593,900	1,657,044	*636,238*
Swift Refrigerator Transit Co.	7,621	8,559,317	1,349,194	811,252	427,966	1,239,218	*109,976*
Cudahy Packing Co.	1,518	1,716,490	423,098	217,093	85,824	302,917	*120,181*
Morris & Co.	2,411	2,308,521	476,593	197,256	115,426	312,682	*163,911*
St. Louis Independent Packing Co.	150	191,200	35,217	11,915	9,560	21,475	*13,742*
Texas Company	1,148	1,305,291	79,236	36,835	65,265	102,100	22,864
Southern Cotton Oil Co.	426	364,170	21,812	21,428	18,209	39,637	17,825
Crystal Car Line	190	228,259	10,963	5,704	11,413	17,117	6,154

[1] Figures in italics show excess of earnings. [2] Rental, $865,992.

TABLE 2.—*Mileage received by representative refrigerator, tank, and other private-car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, inclusive, together with a comparison of the total of repairs and depreciation computed at 5 per cent on the investment in cars, with the mileage earnings for each year.*

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Arms Palace Horse Car Co.[2]							
1914	459	$978,608	$36,235	$52,291	$48,930	$101,221	$64,986
1915	467	943,211	46,513	40,656	47,161	87,817	41,304
1916	458	798,391	54,012	54,426	39,920	94,346	40,334
1917	448	693,901	44,930	60,314	34,695	95,009	50,079

[1] Figures in italics show excess of earnings. [2] Data not available for 1913.

TABLE 2.—*Mileage received by representative refrigerator, tank, and other private-car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, etc.*—Con.

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Chicago, New York & Boston Refrigerator Co.:							
1913	845	751,130	134,996	58,184	37,556	95,740	*39,256*
1914	823	746,012	122,502	54,034	37,301	91,335	*31,167*
1915	813	738,524	134,723	97,943	36,926	134,869	146
1916	795	729,173	134,022	74,662	36,459	111,121	*22,901*
1917	781	720,367	126,472	98,994	36,018	135,012	8,540
Doud Stock Car Co.:							
1913	1,557	880,013	53,147	76,467	44,001	120,468	67,321
1914	1,459	791,232	35,028	102,500	39,562	142,062	107,034
1915	1,352	766,878	40,367	113,615	38,344	151,959	111,592
1916	1,214	737,556	75,344	90,168	36,878	127,046	51,702
1917	1,030	696,097	64,883	96,605	34,805	131,410	66,527
German-American Car Co., now the General American Tank Car Corp.:							
1913	1,497	1,276,598	124,700	81,278	63,830	145,108	20,408
1914	1,833	1,563,063	159,526	105,722	78,153	183,875	24,349
1915	2,661	2,292,933	199,894	111,256	114,647	225,903	26,009
1916	3,494	4,586,350	251,463	136,090	229,317	365,407	113,944
1917	4,331	6,081,428	284,330	129,864	304,071	433,935	149,605
Lemac Carrier Co.:							
1913	178	214,855	13,347	15,761	10,743	26,504	13,157
1914	156	188,241	7,819	21,229	9,412	30,641	22,822
1915	156	188,241	8,338	7,260	9,412	16,672	8,334
1916	129	155,578	4,256	15,287	7,779	23,066	18,810
1917	200	241,460	17,738	21,281	12,073	33,354	15,616
Mather Horse & Stock Car Co.:							
1913	10,399	7,843,446	111,167	660,604	392,172	1,052,776	941,609
1914	10,021	7,558,339	75,696	730,056	377,917	1,107,973	1,032,277
1915	10,212	7,828,826	78,502	521,265	391,441	912,706	834,204
1916	9,763	7,539,770	49,781	659,432	376,989	1,036,421	986,640
1917	9,261	7,169,033	11,445	828,261	358,452	1,186,713	1,175,268
Street Western Stable Car Line, now The Streets Co.:							
1913	6,750	3,926,915	267,046	312,607	196,346	508,953	241,907
1914	6,488	3,869,548	180,891	345,288	193,477	538,765	357,874
1915	5,458	3,261,378	144,965	368,803	163,069	531,872	386,907
1916	4,972	3,023,355	153,329	340,464	151,167	491,631	338,302
1917	3,661	2,248,155	[2] 74,060	364,763	112,408	477,171	403,111
Union Tank Line Co.:							
1913	12,411	13,609,994	1,991,178	756,030	680,499	1,436,529	*554,649*
1914	12,389	14,011,309	762,827	683,780	700,565	1,384,345	621,518
1915	14,358	15,651,558	942,819	716,637	782,578	1,499,215	556,396
1916	16,069	18,365,132	1,449,749	871,960	918,257	1,790,217	340,468
1917	18,065	23,624,377	1,641,557	886,471	1,182,219	2,068,690	427,133
Western Heater Dispatch:							
1913							
1914, 4 months	380	369,065	26,775	[3] 25,773	6,151	31,924	5,149
1915	379	368,199	43,271	[3] 42,691	18,410	61,100	17,829
1916	379	368,199	37,458	[3] 22,802	18,410	41,212	3,754
1917	379	368,199	16,780	[3] 62,654	18,410	81,064	64,284

[1] Figures in italics show excess of earnings.

[2] Rental in lieu of mileage, $467,094.

[3] Includes repairs on 147 box cars.

[4] Data not available for 1913, 1914, and 1915.

[5] Only repair supplies are shown.

TABLE 2.—*Mileage received by representative refrigerator, tank, and other private-car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, etc.*—Con.

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
American Refrigerating Transit Co.:							
1913	3,146	3,389,578	510,863	286,076	169,479	455,555	*55,308*
1914	5,255	5,988,821	746,333	385,802	299,441	685,243	*61,090*
1915	5,251	5,997,237	841,273	383,326	299,862	683,188	*158,085*
1916	5,212	5,960,773	915,652	467,254	298,039	765,293	*150,359*
1917	5,437	6,195,065	948,245	665,191	309,753	974,944	*26,699*
Armour & Co., car department:[2]							
1916	4,551	3,393,800	1,109,436	563,786	169,690	733,476	*375,960*
1917	4,866	4,175,774	1,099,463	620,648	208,789	829,437	*270,026*
Swift Refrigerating Transportation Co.:							
1913	7,252	8,555,886	1,424,118	1,139,237	427,794	1,567,031	142,913
1914	6,721	8,166,129	1,295,630	938,363	408,306	1,346,669	51,039
1915	6,783	8,537,579	1,404,379	975,971	426,878	1,402,849	*1,530*
1916	6,628	8,657,319	1,380,069	1,070,961	432,866	1,503,827	123,758
1917	7,118	10,149,532	1,351,152	1,277,661	507,477	1,785,138	433,986
Cudahy Packing Co.:							
1913	1,510	1,513,629	453,074	165,293	75,681	240,974	*212,100*
1914	1,502	1,471,066	440,992	134,084	73,583	207,667	*233,325*
1915	1,498	1,588,979	512,485	119,040	79,448	198,488	*313,997*
1916	1,476	1,393,094	463,543	98,724	69,655	168,379	*295,164*
1917	1,454	1,482,015	406,534	103,429	74,101	177,530	*229,004*
Morris & Co.:							
1913	2,268	2,290,930	498,307	260,266	114,547	374,813	*123,404*
1914	2,273	2,167,421	503,748	294,587	108,371	402,958	*100,790*
1915	2,555	2,596,430	601,524	288,313	129,822	418,135	*183,389*
1916	2,388	2,653,993	605,030	298,200	132,700	430,900	*174,130*
1917	2,731	3,389,763	626,327	364,050	169,488	533,538	*92,789*
St. Louis Independent Packing Co.:							
1913	151	195,654	31,735	11,566	9,783	21,349	*10,386*
1914	151	195,654	33,358	19,813	9,783	29,596	*3,702*
1915	151	195,654	28,135	15,321	9,783	25,104	*3,031*
1916	151	195,654	39,125	19,432	9,783	29,215	*9,010*
1917	151	195,654	32,655	28,179	9,783	37,962	5,307
Texas Co.:[3]							
1915	1,478	1,654,326	119,072	40,397	82,716	123,113	4,041
1916	1,458	1,644,667	145,361	44,231	82,233	126,464	*18,897*
1917	1,623	2,020,301	149,214	60,048	101,015	161,063	11,849
Southern Cotton Oil Co.:							
1913	425	405,370	24,001	20,975	20,268	41,243	17,242
1914	424	405,929	23,904	25,310	20,296	45,606	21,702
1915	423	405,000	25,471	69,983	20,250	90,233	64,762
1916	418	401,486	36,012	41,905	20,074	61,979	25,967
1917	396	401,476	34,944	48,529	20,074	68,603	33,659
Crystal Car Line:							
1913	190	218,000	9,712	6,105	10,900	17,005	7,293
1914	194	220,820	9,311	8,673	11,041	19,714	10,403
1915	229	259,320	18,164	6,886	12,966	19,852	1,688
1916	229	259,320	18,117	10,847	12,966	23,813	5,696
1917	229	259,320	17,594	10,438	12,966	23,404	5,810

[1] Figures in italics show excess of earnings.

[2] Data not available for 1913 and 1914.

TABLE 3.—*Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners.*

CLASS A.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS NOT OWNED OR CONTROLLED BY RAILROADS OR SHIPPERS (INDEPENDENTS).

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
Arms Palace Horse Car Company (palace stock cars).	Passenger service		$3,447	5	Thoroughbred stock	$1,018.53	.....	[2]$75.92	.....	.....
Do	Freight service		1,275	5	....do	267.31	.....	[2]75.92	.....	.....
Do	....do		1,167	5	....do	269.71	.....	[2]75.92	.....	.....
Do	Freight and passenger service	441								
Do	....do		2,200	5	....do	357.70	.....	[2]75.92	.....	.....
Atlantic Seaboard Despatch	Refrigerator		1,875	5	....do	321.19	.....	[2]75.92	.....	.....
Chicago, New York & Boston Refrig. Co	....do	412	.....	412	Dairy products	139.84	15,807	139.84	43	$0.38
Chicago Refrig. Despatch Co	....do	859	889	859	....do	247.83	18,526	150.88	51	.41
Do	....do	312	1,300	25	....do	157.40	16,100	131.97	44	.36
Crawford, James H	....do		664	25	Packing house products	141.59	18,224	141.59	50	.388
Dairy Shippers' Despatch	....do	4	400	4	Dairy products	81.39	8,683	81.39	24	.223
Do	....do	299	1,059	25	....do	[3]163.63	21,041	163.23	58	.447
Eastman Car Company	Heater		1,059	299	....do	485.55	24,280	205.54	67	.563
German-American Car Co	Tank	425	800	425	Potatoes	297.10	8,010	62.50	22	.17
do	....do	1,072	1,200	24	Sulphuric acid	300.00	15,894	119.21	44	.33
International Transit Co	....do		1,100	15	Petroleum and products	300.00	9,145	68.58	25	.19
Klein Tank Line	....do	20	1,275	20	Molasses	225.87	8,879	66.60	24	.18
Lemac Carriers Co	Live poultry	46	1,160	46	....do	153.98	8,915	68.27	24	.19
Live Poultry Transportat'n Co	....do	200	1,200	25	Live poultry	363.38	13,628	102.04	37	.28
		691	1,546	25	....do	424.40	16,790	123.75	46	.34

CLASS A.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS NOT OWNED OR CONTROLLED BY RAILROADS OR SHIPPERS (INDEPENDENTS)—*Continued.*

Missouri River Despatch	Refrigerator	446	699	446	Packing house and dairy products	179.12	18,861	158.94	52	.44
Shippers' Refrig. Car Co.	do	277	986	277	Dairy Products	169.95	14,708	122.00	40	.33
Solar Transportation Co.	do	22	340	20	Packing house products	155.28	20,221	153.28	55	.42
Union Tank Line Co.	Tank—600 service	11,881	1,087	25	Petroleum and products	257.93	8,113	60.85	22	.17
Do	Tank—1,000 service			25	do	211.55	5,804	43.53	16	.12
Do	Tank—13,000 service			25	do	273.75	8,828	66.21	24	.18
Western Heater Dispatch	Refrigerator, beer-car type	546	1,054	25	Potatoes	124.75	7,255	58.87	20	.16
Western Live Stock Express	Double-deck stock	975	596	24	Beer	169.96	18,091	163.12	50	.45
					Hogs, sheep, calves	125.05	20,425	125.05	56	.34

CLASS B.—INCORPORATED CAR LINES OPERATING CARS, OWNED OR CONTROLLED BY RAILROAD COMPANIES.

American Refrig. Transit Co.	Refrigerator	3,243	$1,000	3,243	Fruit, vegetables	$271.51	14,122	$131.95	39	$0.36
Central Fruit Despatch	do	3,646	717	3,646	do	174.96	18,500	158.44	51	.434
Pacific Fruit Express	do	9,982	1,541	25	do	547.42	24,895	205.20	68	.56
Sante Fe Refrig. Despatch Co.	do	7,678	1,013	7,678	do	306.70	22,199	165.36	61	.45

[1] The total earnings of private cars includes such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

[2] Figures shown represent average mileage earnings of all cars operated.

[3] Commission earnings not given.

*New cars, in service only a few months.

TABLE 3.—*Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners*—Continued.

CLASS C.—INCORPORATED CAR LINES OPERATING CARS, OWNED OR CONTROLLED BY SHIPPERS; CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH CONTROLLING COMPANIES ARE INTERESTED.

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
Armour Car Lines	Refrigerator	15,206	$1,243	25	Fruit, vegetables	$149.26	17,568	$148.66	41	$0.48
Do	do		717	25	Meats, packing-house products	233.67	27,564	233.67	75	.64
Do	do		500	25	Brewery products	170.40	23,055	None.	63	
Do	Tank		979	25	Oil, grease, molasses	119.00	13,951	104.63	38	.285
Chicago Stock Express[1]	Double-deck stock	50	848	25	Hogs, sheep, calves	178.28	29,713	178.28	81	.49
Cold Blast Transportation Co.	Tank	1,594	506	25	Oils, tallow	75.44	10,508	75.44	29	.21
Do	Refrigerator		1,083	25	Meats, packing-house products	212.27	25,575	212.27	70	.58
Crystal Car Line	Tank	190	1,140	25	Glucose, corn, oil sirup, etc.	314.15	9,880	74.15	27	.203
Cutting Car Co	Rack	100	550	100	Bark	23.48	3,092	18.48	8	.05
Interstate Stock Express[2]	Double-deck stock	25	848	25	Hogs, sheep, calves	153.36	25,500	153.36	70	.42
Kingan Refrigerator Line	Refrigerator	515	900	25	Meat, packing-house products	194.10	25,606	194.10	70	.53
Lackawanna Live Stock Transportation Co	Stock	320	692	25	Live stock	187.32	31,219	187.32	86	.513
Lemp Refrigerator Co.[2]	Refrigerator	250	1,191	250	Brewery products	179.40	18,817	179.40	52	.49
Do	do			25	do	182.67	19,263	182.67	53	.50
Milwaukee Refrigerator Transit & Car Co	do	916	1,000	25	do	239.87	26,844	239.76	74	.66
National Manufacturing Co	Double-deck stock	960	619	25	Live stock	193.50	32,925	193.50	90	.53
National Transportation & Terminal Co	Tank	58	870	25	Turpentine	116.12	15,719	117.90	43	.32
Procter & Gamble Transportation Co	do	531	975	25	Cottonseed oil, grease, tallow	89.35	11,912	89.35	32	.24
St. Louis Refrigerator Car Co	Refrigerator	1,125	700	1,125	Brewery products	231.72	24,697	220.85	68	.60
Swift Live Stock Transportation Co	Palace horse	4	5,091	4	Thoroughbred stock	1,090.20	50,602	1090.20	139	2.99
	Single and double-deck stock	531	405	25	Live stock	104.43	17,416	104.43	48	.286
Swift Refrigerator Transportation Co	Tank	7,621	1,260	25	Cottonseed oil, lard, tallow, etc.	151.85	14,223	107.18	39	.294
Union Refrigerator Transportation Co	Refrigerator		1,167	25	Fruits, vegetables, products	277.27	16,406	125.61	45	.344
	do	2,150	1,110	25	Meats, packing-house products	210.21	25,188	209.40	69	.57
			735	2,150	Brewery products	187.80	20,601	180.54	62	

CLASS D.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH OWNERS OF CARS ARE INTERESTED.

American Asphaltum & Rubber Co.	Tank	30	$1,178	25	Liquid asphaltum	$91.56	11,282	$84.45	31	$0.234
American Cotton Oil Company	do	733	875	25	Cottonseed oil	101.24	12,509	93.82	34	.257
American Linseed Co	do	222	750	25	Linseed oil	85.61	11,415	85.61	31	.23
American Maize Products Co.	do	33	1,179	33	Glucose, corn oil	95.25	12,700	95.25	35	.26
Atlas Coke Co	Coke	60	1,382	60	Coke	59.77	9,961	59.77	27	.16
Beech Nut Packing Co	Refrigerator	5	1,388	5	Packing-house products	162.02	21,603	162.02	59	.44
Callahan, A. P., & Co	Tank	3	1,402	3	Vinegar	47.58	6,333	47.58	18	.13
Chanute Refining Co	do	101	900	25	Petroleum and its products	92.63	12,350	92.63	34	.25
Cincinnati Abbattoir Co	Refrigerator	92	1,200	5	Packing-house products	185.76	25,302	185.76	69	.51
Conewango Refining Co	Tank	34	600	34	Petroleum and its products	71.64	9,548	71.64	26	.20
Crescent Brewing Co	Refrigerator	3	875	3	Brewery Products	112.57	11,257	112.57	51	.31
Crew Levick Co	Tank	57	721	25	Petroleum and products	116.60	15,548	116.60	42	.32
Cudahy Packing Co	Refrigerator	1,618	1,135	25	Meats, packing-house products	283.09	31,403	283.09	86	.775
Do	Tank		1,260	33	Oils, grease, and fats	119.13	15,884	119.13	44	.327
Cudahy Refining Co	do	319	795	319	Petroleum and products	92.52	12,335	92.52	34	.25
Cudahy Bros. (Milwaukee)	do		1,000	25	do	71.08	9,477	71.08	26	.20
Do	Refrigerator	253	725	2	Lard, etc	56.04	7,472	56.04	20	.15
			725	251	Meats, packing-house products					
Dingee, Squire & Co	Tank	11	727	11	Pickles	179.06	19,357	179.06	53	.49
Goodwin Mfg. Co	do	20	1,250	20	Tallow, grease	30.00	4,002	30.00	11	.09
Gulf Cooperage Co	Rock	30	950	23	Empty barrels	70.60	5,454	40.90	15	.11
Hately Bros	Tank	2	1,145	2	Lard	56.40	9,401	56.40	26	.15
Heinz Co., H. J	Refrigerator	152		25	Food products	91.44	12,193	91.44	33	.25
Do	Tank	51		25	Pickles in brine	126.26	15,406	126.26	42	.35
Hill, J. F	do	1	1,140	1	Liquid asphaltum	71.08	9,475	71.08	26	.20
Hormel & Co., Geo. A	Refrigerator	9	1,143	9	Packing-house products	90.01	12,006	90.01	33	.247
Interstate Cooperage Co	Rock	43	700	25	Stove bolts	114.70	11,470	114.70	31	.31
Jemison Coal & Coke Co	Coal	1,500	1,026	1,600	Coal	13.98	2,330	13.98	6	.04
Kirk, Jas. S. & Co	Tank	20	1,088	20	Oil, soap fats	83.36	13,894	83.36	38	.23
Lewis, F. J., Mfg. Co. (Northern Tank Line).	do	40	1,063	40	Pitch, turpentine, asphaltum, creosote	54.82	7,308	54.82	20	.15
Libby, McNeill & Libby	Refrigerator	79	925	20	Food products	59.16	7,888	59.16	22	.16
Do	do		700	5	do	100.17	11,965	100.17	33	.274
						198.94	23,450	198.94	64	.545

[1] The total earnings of private cars include such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

[2] Car line not separately incorporated.

TABLE 3.—*Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners*—Continued.

CLASS D.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH OWNERS OF CARS ARE INTERESTED—Continued.

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
Maryland Steel Co.	Coal	499	$1,246	499	Coal	$86.75	8,492	51.15	23	$0.14
Matthiesson & Hegler Zinc Co.	Tank	83	815	25	Sulphuric acid	63.91	8,521	63.91	23	.18
Mineral Point Zinc Co.	do	82	1,195	82	Acid	62.45	8,326	62.45	23	.171
Morris & Co.	Refrigerator		913	25	Meats, packing-house products	216.28	25,839	216.28	71	.592
Do.	Stock	2,411			Live Stock	83.30	13,823	83.30	38	.23
Do.	Tank		257	226	Oils, grease, fats	97.14	12,955	97.14	35	.266
National Ammonia Co.	do		1,263	19	Ammoniacal liquors	71.40	9,520	71.40	26	.19
National Pipe Line Co.	do	16	1,493	16	Petroleum and products	107.19	14,293	107.19	59	.29
Petroleum Products Co., The	do	568	1,250	25	do	79.40	12,989	97.40	36	.267
Quaker Oats Co.	do	157	1,094	25	Molasses	45.24	6,039	45.24	17	.12
Reid, Murdock & Co.	do	17	888	17	Pickles	35.15	4,687	35.15	13	.062
St. Louis Independent Packing Co.	Refrigerator	5	682	5	Meats, packing-house products	176.08	21,262	176.08	58	.48
Sandoval Zinc Co.	Tank	200	1,275	200	Chloride zinc, sulphuric acid	22.76	3,131	22.76	9	.062
Southern Cotton Oil Co.	do	4	1,300	4	Cottonseed oil	66.78	8,905	66.78	24	.48
Steger & Sons Piano Mfg. Co.	Box	426	900	25	Pianos	29.27	4,860	29.27	13	.08
Stern, Joseph & Sons	Stock	12	429	12	Live stock	179.83	29,971	179.83	82	.492
Stineman Coal Mining Co.	Coal	98	200	98	Coal	95.20	15,856	95.20	44	.26
Taylor Coal Co. of Kentucky	do	50	1,267	50	do	20.26	3,377	20.26	9	.06
Texas Co., The	Tank	21	760	21	Petroleum and products	87.02	11,604	87.02	32	.24
Do.	Box		1,214	25	do	56.33	7,510	56.33	21	.154
United Coal Co.	Coal	1,185	1,325	12	Coal	72.10	12,014	72.10	33	.20
Wawtke & Co., Wm.	Tank	1,010	953	25	Silicate of soda	80.85	10,780	80.85	30	.22
Water Pierce Oil Co.	do	1	1,169	1	Petroleum and products	59.69	7,905	59.69	22	.16
Do.	do	335	932	206	do	67.53	9,270	67.53	25	.18
			900	25						

[1] The total earnings of private cars includes such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

EXHIBIT I.

No. 1033.

Henry Ruttle, Daniel Leonard, and David H. Crorey

vs.

Pere Marquette Railroad Company.

Submitted October 1, 1907. Decided March 2, 1908.

1. While the right to use private cars may doubtless be denied to shippers by appropriate legislation, in the absence of a specific enactment to that effect the Commission is not prepared to say that their use in itself is unlawful; but if their use results under a given set of circumstances in an unlawful advantage to their owners and an unlawful disadvantage to other shippers, a question is presented which under existing legislation is within control of the Commission and may be made the basis of such relief as the facts may justify.
2. Because of defendant's insufficient equipment a number of worn-out cars no longer serviceable for interstate movements were acquired and fitted up by certain shippers for the transporation of their hay from local points on the Port Austin division of defendant's line to junction points with other lines, where the hay was transferred to empty system cars and moved forward to eastern markets: *Held*, that defendant's course in stopping its own cars as well as the cars in its control of connecting carriers, at such junction joints, there to be loaded with hay from the "private" cars, instead of sending them up the line to the loading points where all the shippers might share in their distribution, was to the detriment and at the expense of complainants and other independent dealers, and amounted to a denial to the complainants of the equal enjoyment of the facilities of defendant and was therefore an lawful discrimination.

Alexander B. Simonson and Robert M. Brownson for complainants.

Charles McPherson and Frederick W. Stevens for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

The Port Austin division of the defendant railroad company traverses that part of the state of Michigan that lies north of Lake St. Clair and south of Saginaw Bay and which, because of its conformation as it appears on the map, is sometimes referred to locally as the "thumb" district of the state. It is said to be one of the best hay-producing sections in the United States. Carsonville, where the complainants and other shippers of hay have built more or less extensive storage sheds, is about midway between Port Huron and Port Austin, and seems to be the most important shipping point in the district. But hay in bulk is also shipped to interstate markets from Berkshire, Sandusky, McGregor, Downington, Applegate, and other adjacent points on that division of the defendant's lines.

Notwithstanding its very large production of hay, the business of buying and shipping that commodity has not progressed in a way to satisfy the anticipations of the hay dealers in the locality in question. This has been due primarily to the deficiencies of the defendant company in the matter of freight-car equipment. Its counsel admitted on the hearing that during the last four or five years it has not been able to furnish cars in sufficient numbers to move the traffic offered. The shortage seems to have been especially severe with the shippers of hay. Statements offered by complainants Ruttle and Crorey show a steadily diminishing number of carload shipments made by them during the last six or seven years. It is said that from October 1, 1906, until June 1, 1907, not a single empty system car was sent up to Carsonville for the movement of hay to interstate points. The only cars the complainants were

able to obtain during that period were cars that had come into Carsonville loaded with general merchandise consigned to persons doing business there. In one or two instances the hay shippers were able to get possession of an additional car by having their own men transfer its contents, billed to points beyond Carsonville, to other cars in the train, thus making it available for a return movement of hay.

The general situation has been further complicated by the anomalous use made by some dealers of the so-called private hay cars. This practice, which is of recent origin, has been encouraged and is now defended by the Pere Marquette Railroad Company on the theory that it results in moving out of the district a larger tonnage of hay than would otherwise reach the consuming markets; and undoubtedly it has increased the volume of the traffic of shippers who are able to and do use the private cars. But it is strongly urged by the complainants that the use of such cars by their competitors results in an unlawful discrimination, which, coupled with the general car shortage, has so far destroyed their opportunities to ship hay as to make it doubtful whether they can longer continue in business. Whether it is in law a discriminatory practice is a question of no small importance. It seems to have originated in 1904. A large shipper of hay conceived the plan of buying from an eastern road some old coal cars which, because of their light construction, were not suitable for service in the heavy trains now used on the through lines. At small expense they were equipped for the movement of hay and were then sent to the Port Austin division of the defendant company. Other shippers, quickly perceiving the advantages arising from their use, made arrangements at Chicago to rent old and worn-out stock and other cars that were no longer acceptable for interstate movements. After being fitted up for the hay traffic these cars were also sent to the lines of the defendant.

The cars so purchased or leased are referred to in this record as private cars. Because of their inferior construc-

tion and worn-out condition neither the defendant nor its connections will use them for through shipments. They are permitted to run only from Carsonville, and other local points on the Port Austin division of defendant's lines, to Port Huron, Toledo and Saginaw. On reaching these junction points the hay is transferred to the regular equipment of the defendant or its connections, and is thus sent forward to eastern markets. By keeping them moving back and forth between the local shipping points and the junction points, the owners or lessees of the private cars are able to get a very rapid and effective service out of them. As the distance is only 38 miles to Port Huron the cars can be run there and back again to the shipping point in two or three days. There is some indication in the record that it not infrequently happens that the round trip can be made in one day, thus making the private car available for loading again on the same day and an early movement out on the following morning. Occasionally a train is made up consisting almost entirely of private cars. At the junction or transfer points the shippers who use private cars have storage sheds where the hay can be held, if necessary, until the Grand Trunk at Port Huron, or the Pennsylvania or the defendant at Toledo, furnishes regular empty cars for taking it to eastern destinations. From the junction or transfer points the shipments go forward on the balance of the through rate, except when taken east by the Grand Trunk from Port Huron, in which event the local rates to and from the transfer point are applied.

While those who own or lease the private cars are thus getting their hay rapidly to the junction points, and thence to the consuming markets, in the empty system and foreign cars which are there provided for the further movement, the other dealers at the points of origin either receive no empty cars at all or are able to secure them in very limited numbers. Although such dealers may have their sheds full of hay waiting for cars, they are unable either to move it or safely to make additional purchases. On the other hand the users of the private cars, without incurring expense

for storage sheds, can go into the same community, buy all the hay offered for sale, and at once move it out to the junction point and get it forwarded promptly to the markets. Private cars in large numbers are thus hauled back empty from the junctions to Carsonville and other loading points, while for months no empty system car was brought up the line for the use of the hay dealers who have no private cars. The empty system or foreign cars get no farther than the transfer points.

Two advantages result to the users of private cars from these conditions. The custom is established of paying the farmers for their hay when the shipment actually moves; and the farmers are willing to sacrifice something in the selling price in order to get their money promptly. The private-car owners therefore not only get prompt movement for their hay as soon as they buy it from the producers, but because of the prompt movement they are able to buy it at a less price than the dealers who have no private cars and whose shipments are therefore delayed for uncertain periods of time until system cars can be furnished. It is true that in addition to the cost of purchasing the cars, or to the monthly rental that must be paid by those who lease them only, there is some outlay in making the transfer of the hay at the junction points. These items of expense are avoided by shippers who use the system cars only, for such cars go through to destination without transfer. But this additional cost to the private-car shippers is probably more than absorbed in the lower price at which they are able to buy the hay from the producers; and as they use the private cars as warehouses they are not under the expense borne by other shippers of maintaining warehouses at the shipping points. In view also of their larger and quicker sales the private-car owners can doubtless do business successfully on a narrower margin of profit. Although there are only four such dealers in the district, they shipped out 65 per cent. of the hay during the season of 1907.

Such is the general trend of the testimony offered by the complainants. On the part of the defendant attention was

called to its rules governing the distribution of cars, which provide, among other things, that "the cars owned or leased by shippers must be counted in as their share of available equipment." Although it is said by one witness for the complainants that the private-car owners get their full quota of system cars in addition to their own private cars, this is denied by the defendant. And as indicating the strict enforcement of the rule, the defendant showed, by way of illustration, a record of 71 carloads of hay shipped out of the thumb district by the McMorran Milling Company between October 5, 1906, and June 19, 1907, of which only one carload went forward to the junction point in a car belonging to the defendant; the remaining 70 carloads went out of the district in the private cars of the McMorran Company.

That the tendency of such a rule is good when there are system cars to distribute is undoubted. But the rule does not and lawfully can not operate to give to the independent shippers the use of the private cars that belong to others; and therefore when there are no system cars at the loading points to distribute the rule is wholly ineffectual; the independent shippers get no cars, while the owners of the private cars have them always at hand promptly to move such hay as they can purchase. Without offending the terms of the rule in any respect, the private cars may be kept running back and forth to and from the junction points. There those who own or lease them get all the empty system cars they need to carry their hay to the markets; while the other dealers waiting for empty cars at the loading points get none at all. When there are a few cars available at the loading points for distribution, the small proportion of them allotted to the complainants is of little value in their close competition with the owners of the private cars, all of whose requirements in the way of equipment are fully met at the transfer points. The fact that the complainants get their full share of cars at the loading points modifies only in a small degree the disadvantage under which they labor in not participating in the distribu-

tion of the cars that are put at the sole disposition of the private-car owners at the transfer points. The course of the defendant in setting cars at the transfer points for the use of the private-car owners, instead of taking them up the line to the loading point for the use of all the shippers, is no less unfair to the complainants and the other independent dealers than it would be if the discrimination in the distribution occurred at the loading points. The defendant's practice in that connection simply transfers the place of doing the wrong from the loading points to the transfer points. Of the 70 carloads of hay referred to the record shows that 63.38 per cent. was transferred at Port Huron to system cars or to foreign cars under the control of the defendant, all of which could doubtless have been sent up its line 38 miles to the loading points for equal and fair distribution among all the hay shippers, instead of being stopped at the junction point for the sole use of a few particular shippers who were able to bring hay to that point in their private cars.

But it is contended that the handling of the traffic with the aid of the private cars in the manner described adds to the defendant's equipment and thus indirectly benefits shippers who do not use private cars, because, under the rule for car distribution heretofore mentioned, additional system cars that otherwise would go to the owners of the private cars are put at the service of the independent shippers. It is also insisted, as heretofore stated, that because of the private cars a larger tonnage of hay is moved out of the district than would be possible in any other way. This is probably true. But that fact does not satisfy the demands of the law if it results in an unlawful advantage to some of the shippers at the expense of other shippers in the district. The characteristic and most salutory feature of this legislation is that it assures to all shippers under like circumstances the equal enjoyment on equal terms of the facilities and services of interstate carriers. And so even though this community as a whole may have received a larger benefit from such use of private cars than it other-

wise could, that can not excuse or justify a practice that disregards the rights or destroys the opportunity or prejudices the business of the individual shipper, and gives undue advantages to his competitors.

Much of the hay carried to Port Huron in private cars at the time in question was there transferred and went forward to destination over the Grand Trunk Railway in Grand Trunk cars. But this was an outlet that was not enjoyed by the complainants or the other so-called independent shippers. They had no cars with which to carry their hay to Port Huron. The few Grand Trunk cars that were brought up to Carsonville were especially carded or manifested to particular shippers. They were not available to hay dealers generally. The reason for this, as stated by the defendant, is that the Grand Trunk was unwilling to permit its cars to leave its own rails. It is not unusual for carriers to do what they can to keep control of their own equipment, especially when traffic is moving in large volume. But they are always anxious to accept traffic when they have cars to move it; and if the Grand Trunk Railway was willing to consign its cars to particular shippers up the line of the defendant, it is altogether probable, with a proper guaranty by the defendant of their prompt return loaded to its rails, that it would then have been willing and would now be willing to send cars up the line to Carsonville for the use of the hay shippers in general. The defendant by demanding such assurances from its connections at Toledo was able at this same time successfully to move the potato crop of the district to eastern markets. A large number of its cars were specially assigned for that traffic and the agreement by connecting lines to return them promptly to the defendant's rails was fully respected by them. By making such an arrangement with the Grand Trunk Railway for participating in moving the hay crop, the defendant of course would have had a haul of only 38 miles instead of the longer haul to Toledo and the still longer haul to Suspension Bridge, and would have received less revenues than it actually did. But it would

have fulfilled its obligation to these shippers to move their hay to the markets with reasonable promptness. Whatever rates were lawfully applicable through the Port Huron gateway—whether local rates as stated by the defendant, or through rates as seem to be indicated by the records of the Commission—the owners of the private cars took full advantage of that route, and doubtless the independent shippers would have been glad to do so had the opportunity offered. But for all practicable purposes that route was closed to the independent shippers.

The contention of the complainants is that the private cars should be required to go through to destination or that their use should be prohibited altogether. The record shows that their condition is such as to make it unsafe and therefore improper to require them to be hauled through to destination. And no sufficient reasons have been suggested for holding that the use of such cars in itself is unlawful. Most of the early charters granted in this country were framed upon the theory that railroads were highways in the ordinary and usual sense of that word, and that any shipper who could provide himself with a locomotive and the necessary cars had the right to travel and transport his property over them, subject only to the payment of reasonable tolls for the privilege. This theory has long ceased to be of practical importance in this country. The lack of economy to shippers in owning and running their own cars and locomotives soon made it evident that the railroad companies themselves must provide equipment and operate their roads for the shipping public. Under various state statutes subsequently enacted and under the act to regulate commerce as amended, it has, in fact, now become the affirmative duty of railroad companies to conduct the transportation over their respective lines, and to supply the necessary cars and locomotives for safely and promptly moving the traffic offered. The only remnant that survives of the original conception of railroads as public highways in that sense is the use of private cars, which some

shippers insist upon for special reasons connected with their business and other shippers resort to in order to supplement the deficient equipment of the carriers. But while the right to use private cars may doubtless be denied to shippers by appropriate legislation, we are not prepared, in the absence of a specific enactment to that effect, to say that their use is in itself unlawful. Whether under a given set of circumstances their use results in an unlawful advantage to their owners and in an unlawful disadvantage to others is another question, which under existing legislation is clearly under the control of the Commission, and may be made the basis of such relief as the facts in any particular case may justify. When considered from this point of view, the defendant's course in stopping its own cars at the junction points as well as the cars under its control of connecting carriers, and there putting them at the disposition of the owner of the private cars instead of sending them up the Port Austin division for equal distribution among all the dealers, amounted in our judgment, as we understand the record, to a denial to the complainants of an equal enjoyment of the facilities of the defendant and therefore was an unlawful discrimination. The hay traffic of the thumb district originates at the loading points and is no proper part of the commerce of Port Huron, which is a mere gateway for the traffic to the eastern markets. Both the independent dealers and the private-car owners are conducting their hay shipping business at the shipping points; it is one and the same traffic, whether done by one class of shippers or by another. And manifestly all the cars, whether those belonging to the defendant or those in its control and belonging to connecting lines, that are used in transporting the hay produced in and shipped out of the district, ought to be distributed upon some plan that will give to all the individual shippers a fair distributive share.

We shall make no order at this time governing the distribution of cars for the future in moving the hay traffic from this district. It would be well, however, for the

defendant at once to arrange a conference with a representative committee of hay shippers along its Port Austin division, embracing those who lease and own the so-called private cars, and those who do not, including the complainants, with the view to arriving at some further understanding with respect to the distribution of cars for the coming hay shipping season on a more equitable basis. In this connection the fact that the defendant specially assigns a large number of cars for moving the potato crop while assigning none at all to the special service of moving the hay crop must not be overlooked. Unless some plan can be agreed upon and reported to the Commission by April 20, 1908, the Commission will take the matter up for further consideration and will enter whatever order may be required to secure a more equitable distribution of equipment for this traffic. It is understood that the road and other property of the defendant company while not actually are nevertheless technically still in the possession of a receiver. He is a party defendant in this proceeding and will be included as such in any order that may be hereafter entered herein.

EXHIBIT J.

No. 1305.

Royal Coal & Coke Company

vs.

Southern Railway Company.

No. 1306.

Tennessee Coal Company

vs.

Southern Railway Company.

No. 1307.

Minersville Coal Company

vs.

Southern Railway Company.

Submitted February 29, 1908. Decided April 13, 1908.

The defendant, Southern Railway Company, on its Coster or Knoxville division, had in effect a plan of distribution of coal cars during periods of car shortage whereby the available cars were divided between the mines furnishing the defendant with less than their total output for its fuel supply and the purely commercial mines, on the following basis:

The tonnage of the cars for railway fuel supplied to the fuel-contract mines was deducted from the rated capacities of such mines, and the remainder was considered the rating of such mines on which they shared with the commercial mines in a pro rata distribution of the car tonnage available for commercial shipments.

This plan of car distribution applied only to cars assigned for the carrier's own fuel supply; there were no individual cars or cars owned by others than the carrier itself on that division; and the defendant treated foreign railway fuel cars as though they were commercial cars, *i. e.*, the billing of such cars was respected, but they were charged against the mines to which they were assigned as commercial cars.

The petitions did not complain of the defendant's method of rating the various mines; but the evidence introduced to prove the discrimination effected by the above plan of car distribution involved testimony showing the progressively decreasing relative ratings for the commercial mines that resulted from the greater relative car supply allotted by the defendant to the railway fuel contract mines. The plan of car distribution, however, is in these cases the subject-matter of the complaint, not the mine ratings.

Upon the facts shown, it is *Held:*

1. That the plan of car distribution practiced by the defendant was unduly preferential of the fuel-contract mines, and resulted in an unreasonable disadvantage to the purely commercial mines.
2. That in the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be hereafter followed is to allow to each mine its fair and just proportion of the coal cars, estimated upon its justly ascertained capacity, and without regard to whether the mine furnishes partly fuel coal and partly commercial coal, or commercial coal only.

3. That the carrier should publish, or post for convenient inspection, at frequent and regular intervals, the ratings of the various mines and the car tonnage received by them within the period covered by the report; in cases where commercial mines have received more or less than their equitable pro rata of the car tonnage during any particular period, the overplus or shortage for such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports.
4. That the carrier must be free to contract for the total output of a mine, if it so desires; or it may contract for any part thereof less than the whole; and it is entitled to get its fuel first. If, however, a mine contracts to furnish only a part of its output to the carrier for fuel, and if the filling of its contract with the carrier calls for its full pro rata of cars, or more, then it should receive no other cars for commercial shipments. If such a mine in filling its contract to supply fuel coal does not exhaust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars.
5. That the occupation, the user, and the consequent reduction of the available equipment of the carrier are the vital matters in all plans of car distribution in times of shortage.
6. That the money damages alleged by the complainants, the Tennessee Coal Company and the Minersville Coal Company, were not proven with sufficient certainty to warrant the Commission in making any award, even if it had jurisdiction in such cases.

Charles F. Diggs and William A. Pless for complainants.
Claudian B. Northrop for defendant.
George S. Patterson and George V. Massey in support of the Rule of the Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner:*

The complaints in these three cases were filed October 14, 1907.

In case No. 1305 the Royal Coal & Coke Company, a corporation existing under the laws of the state of Tennessee, after describing the location of its mines in the Coal Creek district, in Tennessee, on the lines of the defendant carrier, the Southern Railway Company, and having set forth that the defendant is a common carrier subject to the act to regulate commerce, alleged: (1) The interstate character of the complainant's shipments of coal; (2) the insufficiency of the defendant's equipment of coal cars—commonly called a car shortage; and (3) the duty of the defendant under the circumstances to distribute its coal-car equipment pro rata among all the coal mines requiring the use thereof without undue discrimination in favor of any mine or mines and without unjust prejudice to the rights of the complainant.

The complaint charges that the plan of car distribution adopted by the defendant is unjust and unreasonable, discriminatory, and unduly preferential to the fuel contract mines, and unduly prejudicial to the mines selling commercial coal. This plan, briefly stated, is as follows:

The tonnage of the cars for defendant's railway fuel supplied to the fuel contract mines was deducted from the rated capacities of such mines and the remainder was considered the rating of these mines on which they shared with purely commercial mines in the pro rata distribution of cars available for commercial shipments. This plan is illustrated by complainants as follows:

> "Two mines, designated as A and B, are rated by the defendant at a daily loading capacity of 100 cars each. On a given day there are but 100 cars available for both mines. Mine A loads 50 of these cars as so-

called 'arbitrary,' or 'preferential,' or 'railway company fuel cars' for defendant, while mine B loads none. Said 50 cars are subtracted from mine A's original loading capacity of 100 cars daily, leaving the remaining available 50 cars for commercial coal to be divided between the two mines on the basis of the new rating of 50 cars daily capacity for mine A and 100 cars daily capacity for mine B, thereby giving mine B 33⅓ cars and to mine A 16⅔ cars of said 50 cars, which, added to the 50 cars loaded for company fuel, gives mine A 66⅔ cars, and mine B 33⅓ cars out of the original 100 available cars."

Case No. 1306, wherein the Tennessee Coal Company is complainant, is in substance the same as the case of the Royal Coal & Coke Company, but asks damages in the sum of $5,000.

In case No. 1307 the Minersville Coal Company follows the allegations of the preceding cases, but claims damages in the sum of $10,000.

The Southern Railway Company, the defendant, filed answer to each of the complaints November 6, 1907, in which it admitted the interstate character of complainants' shipments, and as to the insufficiency of equipment, stated that "at certain seasons of the year it has an ample supply of coal cars to meet the demands of all shippers of coal on its line, while at the other seasons of the year there is a shortage of coal cars," and that "it makes every effort to distribute and divide the cars among its various shippers on all its divisions in accordance with a fair and just pro rata, and without any unjust, undue, or unreasonable discrimination in any manner whatsoever"; that this result is accomplished by the method it pursues, which it illustrated as follows:

Let it be assumed that a mine has a daily capacity of 1,000 tons, or 25 cars averaging 40 tons each. Let it be assumed further that such a mine has a fuel contract with the Southern Railway Company under

which it is obliged to furnish a minimum of 400 tons, or 10 cars per day.

The shipment of this coal for fuel purposes reduces the capacity of this mine for commercial shipments to 600 tons per day instead of 1,000 tons, and it is given its pro rata share of equipment available for commercial shipments on this basis, and this applies to all of the fuel mines in the Coal Creek district.

At the hearings in Knoxville, Tenn., the three cases, by stipulation of counsel, were consolidated and heard together. The cases were argued at Washington, D. C., orally and by briefs. The facts in this case are substantially as follows:

The complainants are corporations mining bituminous coal in the Coal Creek district of Tennessee, on the Coster or Knoxville division of the Southern Railway Company, and shipping coal over the rails of the defendant into the Carolinas and Georgia. There have been a shortage of coal cars on this division of the Southern Railway for a number of years. At no time during the last three years has there been a full supply of coal cars on that division except during the month of July, 1907. This complete supply of equipment covered the entire month and was used as a means of rerating the mines on the basis of actual shipments. There is practically no controversy as to the plan of distributing cars in cases of shortage as hereinbefore stated and illustrated by both the complainants and the defendant. The effect of the rerating of the mines on the basis of actual shipments during the month of July, 1907, was to raise the relative percentage of the ratings of the fuel mines and to lower the relative percentage of the ratings of the purely commercial mines, which was brought about in this way. Prior to the month of July no mine had a full supply of cars, but the fuel mines were allotted a larger total proportion of the available car supply than fell to the purely commercial mines and had steadier work to give their operatives, and labor naturally drifted to the fuel mines, leaving the commercial mines somewhat crippled for men.

The mines shipping railway fuel do get a larger proportion of the total cars available, and because of this they enter into fuel contracts with the carrier at a price somewhat lower than the average market price of coal. As a result they secure greater steadiness of work for their miners, a larger total output, certainly of part of their income, and a chance to obtain at least a part of the commercial prices for their output after supplying the company fuel.

The Southern Railway buys its fuel from the various coal-mining districts along its line and along the lines of other roads, at mine prices ranging from 72 cents to $1.10 per ton, and consumes about one-half of the total output of the Coal Creek district; the price paid by it in this district recently has been not above $1.10 per ton, which is the highest price it pays for any coal at the mines. It buys such coal under contracts for various periods for so many tons per month, and its contracts are not materially different from those of other large consumers of coal. There are no private or individual cars belonging in this coal district. The defendant respects the billing of cars of other railroads which are sent into these mines for loading with coal for railroad use, counts them against the mines to which they are sent as commercial cars, and does with these foreign fuel cars what the complainants contend it should do with respect to its own fuel cars.

The defendant's plan of car distribution as affecting its rating of the mines produces a result unduly prejudicial and disadvantageous to the purely commercial mines in that they are progressively restricted in the allotment of cars. In view of the facts the question arises, What would be a reasonable and just plan of car distribution in cases of car shortage?

This Commission, in its report to Congress in response to the joint resolution approved March 7, 1906, on the subject of railroad discriminations and monopolies in coal and oil, on page 68, referring to the section of country in which the investigation had been made, discussed the question of car distribution generally and said:

The prevailing rule is that cars in which fuel coal was loaded were not counted against the percentage of cars allotted to the operator furnishing such coal, but that fuel-coal cars were arbitrarily allotted to the operators furnishing such coal over and above their percentage allotment.

The reason advanced by the officers of the railroad for this reason that it enabled them to get cheaper fuel, in that an operator loading fuel coal would get the cars necessary to carry the same over and above the percentage he was entitled to under the system of car distribution in effect, and that he would therefore be willing to make a low price on fuel coal in order to keep his colliery running regularly. The result of this was practically a payment by the operator to the railroad company for cars by way of reducing the price of fuel coal, and while the profit of the operator on fuel coal may not be large, it enabled him to keep his miners regularly employed and his plant in operation and gave him an advantage over a competitor who has no order for fuel coal.

This system of allotting cars for fuel coal and not charging the same as against the percentage of the operator receiving the same is unjust and unfair and unless fuel coal is taken from all of the mines on the line of the road in the same proportion that cars are distributed.

On page 69 the Pennsylvania Railroad Company's plan was set forth as follows:

Commencing January 1, 1906, assigned cars—*i. e.*, cars for Pennsylvania Railroad fuel supply, foreign railroad cars especially consigned for the fuel supply of railroads consigning such cars, and individual cars assigned by the owners to specified mines for loading—will be charged against the capacity of the mines at which they are placed. The difference between the

rated capacity of a mine and the capacity of the assigned cars placed for loading will be the rated capacity on which all other cars will be prorated.

The Commission expressed its opinion thereon, and said:

> And this would seem to abolish the assigned cars on that road for its fuel supply and also for fuel supply of foreign roads, and the same circular covers individual cars; but where the individual cars and the assigned cars exceed the rated capacity of a mine the order mentioned does not relieve the unfair condition.

On page 80 of this report the Commission said:

> Another source of discrimination in the system of car distribution of the several railroads is the assignment of cars to certain operations for fuel coal or company coal without charging such cars against the pro rata distributive shares in the equipment of the road. In other words, treating such assigned cars as arbitrary cars and also treating cars from other roads for fuel coal as arbitrary cars and not counting them against the percentage to which the operator receiving them is entitled. This method of distributing cars interferes with and to a certain extent nullifies any fair system of distribution which may be put into effect, creates inequalities and injustice as between shippers and is frequently used by the railroad company to enable it to get its fuel supply at less than the market price for coal, and amounts to an arbitrary assignment of cars in consideration of the difference between the price the Company has to pay for fuel coal and the market price thereof.

On page 81 the Commission recommended:

> That after reasonable time carriers engaged in interstate commerce be prohibited from using "individual" or "private" cars for the handling of coal traffic; and

further that when a carrier is unable to furnish all the cars required by all the shippers upon its line, all cars in service on the road be treated as the equipment of the company and subject to distribution according to the system or plan in effect at that time.

In the circuit court for the eastern district of Pennsylvania, the Logan Coal Company, which owned 150 private or individual coal cars, filed a petition December 17, 1906, for mandamus against the Pennsylvania Railroad Company, to require the defendant to cease from subjecting the company to undue, unjust, or unreasonable discrimination in the distribution of cars under the rule of the Pennsylvania Railroad quoted above. Answer was filed and the case was heard and decided by Holland, district judge, July 1, 1907, 154 Fed. Rep. 497. The court said:

> The relator is not in any sense discriminated against. First, it has the use of its own cars and its share of company cars upon a basis which gives it a certain advantage over its competitors, and, in addition, it receives a certain compensation from the railroad company for its cars. They are placed upon the tracks of the defendant company and the engines and the train crews and the moving facilities of the company are taxed to transport these individual cars, and there is no reason that I can see why they should not be regarded in the distribution of cars to shippers as part of the equipment, in order that the defendant company may be enabled to treat all shippers the same, and, as near as may be, at all times in the year furnish car facilities for the transportation of coal along its line upon a basis fixed upon the rated capacity of the mine as ascertained by the method adopted by the railway company. * * *
>
> What has been said in regard to individual cars applies to the use of fuel cars, whether they be those of the defendant company or fuel cars of other corporations purchasing coal from the relator. They

> should be treated the same as individual cars in the distribution of available cars, and the defendant company in its treatment of these cars by the order of January 1, 1906, in no way that we can see unduly or unreasonably discriminated against the relator.

That case merely held that granting the rule to be as set forth in the petition, the relator, which owned individual cars, was far from being unduly discriminated against, or unduly prejudiced by said rule, in fact had an advantage over its competitors, and that, therefore, the petition for mandamus should be dismissed. It does not approve the Pennsylvania Railroad Company's plan of distribution, but condemns it by saying:

> The general trend of the decisions is to the effect that all cars, whether individual cars or owned by the railroad company, or assigned by other railroad companies for fuel, shall be treated as an available car equipment as a whole, distributable pro rata, to shippers desiring their use along the line, upon a basis giving each equal facilities with the other.

This Commission did not endorse or commend the plan of the Pennsylvania Railroad Company, nor was that plan approved by Judge Holland in the Logan coal case.

On January 16, 1907, the United States *ex rel.* Pitcairn Coal Company, which owned no individual coal cars, filed a petition in the circuit court for the district of Maryland for a mandamus to require the Baltimore & Ohio Railroad Company *et al.* to cease from subjecting the relator and other coal companies on the Monongah division to undue and unreasonable discrimination in the shipping and transportation of coal. The case was decided by Morris, district judge, June 11, 1907, 154 Fed. Rep. 108. The relator had charged that, whenever in any district the supply of cars was insufficient to fill all orders, cars were supposed to be distributed, and the Baltimore & Ohio Railroad Company

alleged that it had distributed such cars on a percentage basis, to all the mines in such district, but in the distribution of cars on a percentage basis, before distribution was made, certain arbitrary assignments of cars were made, reducing the total number of cars to be distributed.

In discussing this case the court said:

> The purchase of coal at the mines by the Baltimore & Ohio Railroad Company itself amount to about 5,000,000 tons a year; the consumption being greatest in the winter time, when the car shortage is most felt. This coal is delivered by the mines from which it is purchased directly onto the engines, tenders, and company's cars, and does not pay freight, and does not enter into interstate commerce. It is consumed by the Baltimore & Ohio Railroad in operating its own lines. It is naturally purchased from the larger mines, having coal of the grade and price used, because they have the capacity to furnish daily the large quantity daily required by the railroad, but the coal so sold is not counted in the shipments on which the percentage rating is based.

This statement of the facts in the Pitcairn case does not apply in these cases against the Southern Railway Company, because it is conceded that even the company's fuel supply bought at the mines in Tennessee is largely hauled to, stored, and used in the states of North and South Carolina; it does enter into interstate commerce. Again, the Southern Railway Company does count its own fuel coal in ascertaining the ratings of the various mines in the Coster division, and even if defendant's own fuel were not shipped to interstate points its plan of car-distribution would interfere with and affect interstate shipments of commercial coal.

The Pitcairn case, like the Logan case, was a petition for mandamus, and was based upon a plan of car distribution, but these are the only points of similarity: The Pitcairn Company owned no individual cars, the Logan Company did; the Pitcairn Company was adjudged "entitled to a

peremptory writ requiring the Baltimore & Ohio Railroad Company, in cases of car shortage, in distributing the pro rata shares of the general coal-car equipment of the railroad company according to the percentage to which each mine is entitled, to include in the available car supply as the basis of the calculation the individual cars of mine operators regularly used on the Baltimore & Ohio Railroad, not intending, however, to give to the relator, or those in like situation with him, in any event the use at any time of individual cars to the exclusive use of which other mine operators are entitled."

In the case of the Railroad Commission of Ohio *et al. vs.* Hocking Valley Railroad Company *et al.*, 12 I. C. C. Rep. 398, this Commission said:

> The total of the foreign railway fuel cars, the private cars, and the system cars should be taken into consideration in determining the distribution. If the number of foreign railway fuel cars or of private or leased cars is less than the percentage or proportion of the company to which such cars are consigned or assigned, that company should be given all of the foreign railway fuel cars consigned to it and all of the private or leased cars belonging to it, and a sufficient number of system cars to make up its proportion. On the other hand, if the number of foreign railway fuel cars consigned to it and of private cars assigned to it is greater than its proportion, all such cars so consigned or assigned to it should be delivered to it and the available system cars should be divided among the other operators on the basis of a changed percentage because of the elimination of the company or companies to which the foreign railway fuel cars and private cars have been consigned, assigned and delivered.

The railroads must have fuel; they are entitled, and indeed required by law, to take all proper and just measures to assure the regularity and certainty of their fuel supply;

but in securing such supply they are not justified either in beating down the price of coal by means of plans of car distribution or in penalizing mines that refuse to sell fuel coal by lowered mine ratings or lessened car supply.

The carrier must be free to contract for the total output of a mine, if it so desires; or it may contract for any part of a mine's output less than the whole, and it is entitled to get its fuel coal first, for without fuel it can not haul even commercial coal to its destination, to say nothing of complying with its obligations to the public at large; but in all its acts it must deal even-handed justice in the matter of car distribution as in the matter of rates. If a mine contracts to furnish only a part of its output to the railroad for fuel, and if the filling of its contract with the railroad calls for its full pro rata of cars, or more, then it should not receive other cars for commercial shipments. If such a mine in filling its contract to supply fuel coal to the railroad does not exhaust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars.

We are clearly of opinion that in the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be hereafter followed is to allot to each mine its fair and just proportion of the coal cars estimated upon its justly ascertained capacity and without regard to whether the mine furnishes partly fuel coal and partly commercial coal, or commercial coal only.

Two of the complainants, the Tennessee Coal Company in docket 1306, and the Minersville Coal Company in docket 1307, claim damages. A great deal of time was consumed by the complainants in attempting to show that if they had been supplied with all the cars they needed, and if they had had sufficient laborers, and if they had sold all the coal so mined and shipped at about the average mine price for that period, when they would have made a profit on a certain number of supposed tons of coal equal to the difference

between the said average mine price per ton and the estimated cost of producing the coal. But the testimony as to what would have been the cost of producing the coal, making all the assumptions enumerated above, is too indefinite, as it is based upon a cost to the operator excluding fixed charges as having been paid by the coal which, during the period, was actually shipped. The testimony is not positive nor direct, but is inferential, vaguely indefinite, and altogether lacking in certainty, and, without considering the question of our jurisdiction to make an order for reparation in such cases, does not justify this Commission in making an award of damages to either company.

The conclusions of the Commission are that the plan of distribution of cars by the defendant in cases of car shortage gives an undue and unreasonable preference and advantage to mines furnishing it with company fuel when the fuel contract calls for less than the total output of the mine, and subjects the purely commercial mines to an undue and unreasonable prejudice and disadvantage in that their pro rata shares of the coal-car equipment of the defendant are not only absolutely reduced in the daily allotment of available cars but their relative ratings based on actual shipments in comparison with the fuel-furnishing mines of the Coal Creek group are also progressively reduced by reason of their inability to get their full share of cars; and that the only reasonable and just plan of car distribution is for the carrier to consider and count its own fuel cars in the same manner as foreign fuel cars are considered and counted, and that the defendant should be required to cease and desist from its present plan of car distribution, and within a reasonable time put in force the plan of car distribution indicated. The defendant should continue its present practice in the manner of the publicity of ratings and provide full and fair ratings of the capacities of the mines of the respective groups, publishing at regular intervals the ratings and car tonnage received by the mines within the period covered by the report. In cases where commercial mines have received more or less than their equitable pro

rata of the car tonnage during any particular period the overplus or shortage of such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports.

No reparation should be allowed to any of the complainants.

After these cases have been fully argued the Pennsylvania Railroad Company, by its general counsel, asked to be heard with respect to the rule of that carrier referred to above. Permission to file a brief herein was granted and the brief filed.

The Pennsylvania Railroad Company, in its brief, does not discuss any decision of the courts or of this Commission concerning the matters in issue, but its whole argument is based upon a statement that the fuel coal sold by the operator to the carrier at the mine is carried thence by the carrier for its own benefit and not for the benefit of the operator. In other words, the operator is selling fuel coal to the carrier makes a purely local sale, the ultimate destination of the commodity thereafter being at the will of the carrier, and the mine operator not being a shipper at all with respect to the fuel coal delivered by him to the railroad.

This argument is ingenious, but far from convincing. If it proves anything it proves too much. Commercial coal is usually sold f. o. b. at the mines, and the routing and freight charges thereon assumed by the purchaser. Would the Pennsylvania Railroad Company contend that the tonnage of such shipments should not be charged against the pro rata shares of car tonnage to which such mines are entitled? In both cases the available equipment of the carrier is used and the number of cars that can be furnished other shippers proportionately reduced.

Again, the argument proves too much, for if followed to its logical conclusion it would result in the condemnation of the very rule in support of which it is offered. The rule of the Pennsylvania Railroad is that: "The difference between the rated capacity of a mine and the capacity of the assigned cars placed for loading" railroad fuel supply "will

be the rated capacity on which all other cars," that is, for commercial shipments, "will be prorated."

But why make such computation at all? If the contention now made in the brief of the Pennsylvania Railroad Company be true, such reduction of the rated capacity of the fuel contract mines is unfair to them. The cars should be assigned arbitrarily and without deduction from the rated capacity of the mines. The mere statement of the result of the argument refutes it. The fact of the matter is, however, that the occupation, the user, and the consequent reduction of the available equipment of the road is the vital matter in all cases of car distribution in times of shortage, and whether the cars are used for fuel supply or for commercial shipments they should be furnished the mines as hereinbefore set forth.

An order in accordance herewith will issue.

EXHIBIT K.

No. 1322.

Rail & River Coal Company

vs.

Baltimore & Ohio Railroad Company.

Submitted April 11, 1908. Decided June 2, 1908.

1. The Commission has jurisdiction of complaints involving the practices and regulations of interstate carriers in respect to the distribution of coal cars. Section 15 of the act is to be read in the widest possible sense; it brings within the jurisdiction of the Commission all the regulations and practices of carriers under which they offer their services to the shipping public, and conduct their transportation.
2. Any regulation or practice that withdraws from a shipper the equal opportunity of taking advantage of the rates offered by a carrier is a regulation or practice "affecting rates," within the meaning of that phrase as used in section 15.
3. The principles announced in *Railroad Commission of Ohio* v. *Hocking Valley Ry. Co.*, 12 I. C. C. Rep., 398, in regard to the distribution of private coal cars and foreign railway fuel cars, adhered to and reaffirmed with a reference to the obvious relation between a shortage in cars and an insufficiency of motive power, sidings, train crews, and other facilities which usually accompany a car shortage.
4. As a mere matter of law and in the absence of a definite showing based on actual experience a system of rating mines that takes into consideration both physical and commercial capacity can not be said to be discriminatory and unlawful. A rule permitting the owner of several mines to "pool" or group all his per-

centage cars at one of them can not be condemned as unlawful merely on hypothetical grounds unsupported by proof of discriminatory results.

H. B. Arnold for complainant.

Hugh L. Bond, Jr., John G. Wilson, W. A. Parker, and F. A. Durban for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

A preliminary question of jurisdiction must first be disposed of before the other questions of fact and law presented by this record may properly be considered. The complainant alleges that the operation of the defendant's rules and regulations governing the distribution of coal cars among the various coal mining districts on its lines results in giving to some of the districts a less than a just proportion of available cars; and that, as applied to the distribution of cars allotted to the particular district in which the complainant is mining coal, the rules and regulations give an undue preference to some of the operators in that district and create an unlawful discrimination against others. The complainant therefore prays that these regulations and practices may be declared to be unlawful and that the defendant may be required by appropriate order to adopt a plan that will yield more equitable results. In its answer the defendant, while denying any inequality and unfairness in the distribution, raises the jurisdictional question by pleading that such matters are not within the scope of the regulative authority of the Commission.

The point arises upon the first paragraph of section 15 of the amended act to regulate commerce. Stripping the clause of unnecessary words and eliminating from it all matters not essential to this inquiry, the language upon which the argument of the defendant is based will stand out more clearly and the question will more readily be apprehended. The clause will then read as follows:

> That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made * * * it shall be of the opinion that any of the rates * * * demanded * * * by any common carrier * * * for the transportation of persons or property * * * *or that any regulations or practices whatsoever of such carrier or carriers affecting such rates,* are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate * * * thereafter * * * to be charged; *and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed;* and to make an order that the carrier shall cease and desist from such violation * * * and shall conform to the regulation or practice so prescribed.

The contention of the defendant is that its regulations and practices with respect to the distribution of coal cars among the various mines on its lines are not regulations or practices "affecting rates," and it therefore denies the authority of the Commission to intervene between it and its coal shippers with a view to controlling and reforming the manner in which the distribution is made. Its counsel says:

> The law confers no power to make any order with reference to any regulation or practice of the carrier not affecting rates. Regulations as to car distribution do not affect rates, and the Commission has, therefore, no power to prescribe what regulation or practice shall be followed with regard thereto.

The point is not altogether a new one. It has been pleaded in other cases although not seriously insisted upon in argument. But in this proceeding it is earnestly urged upon our attention by the defendant as decisive of the

controversy and of the right of the Commission to enter an order. The question is one of very large importance. If the numerous and varied regulations and practices of carriers which enter so vitally into questions of transportation do not "affect rates," in the sense attributed by counsel for the defendant to that phrase, and therefore lie outside the jurisdiction of the Commission, our power to protect the shipping public against abuses is much less extensive than has generally been understood. There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are disposed to and do actually favor some shippers at the expense of others. By giving to one manufacturer a larger proportion of cars than he is entitled to, when the volume of his traffic is compared with that of a competitor, his business may be encouraged and built up, while the business of the competitor may be destroyed, if the Commission has no authority to intervene on his behalf. That there is need of such authority will appear from an examination of the published reports of proceedings in which the Commission has found just occasion to exercise it.

The power upon complaint made to deal with unjust, preferential, and discriminatory regulations and practices of carriers was clearly vested in the Commission under section 15 of the act as it stood prior to the amendatory act of June 29, 1906. Whether or not it still exists under section 15 of the amended act must be ascertained by examining the whole act as it now stands with a view to gathering the general intent and purpose of the enactment, and then by examining the various provisions by which the intent and purpose are sought to be made effective.

The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rates but an impartial enjoyment of the facilities and services of interstate carriers. That principle appears throughout the act, but nowhere more clearly than in sections 2 and 3. The former assures to shippers an equality of rates for the transportation of property under substantially similar circumstances and conditions; and the latter assures to them an equality in the opportunity to use the rates, facilities, and services of carriers. One right supplements the other. An equality in rates without an equal opportunity to use the facilities of carriers would fall far short of the general objects sought to be accomplished by the Congress. On the other hand, the right to impartial treatment by carriers in the transportation of their merchandise would mean little to shippers if not accompanied by an assurance of an equality also in rates. And when we approach the consideration of any special provision in the act, this understanding of its general scope and purpose must not be lost sight of. As was said by Chief Justice Marshall in *The Durousseau* v. *United States*, 6 Cranch, 307, 314:

> The spirit as well as the letter of a statute must be respected, and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent.

But, while keeping in mind the general intent and spirit of the act, we are by no means to be understood as indicating that our power to deal with undue preferences and unlawful discriminations, when accomplished by carriers through unjust regulations and practices, rests upon implication; or that it is necessary by implication to inject into section 15 explanatory words that are not embraced within its text. The language of that provision is entirely sufficient in itself to enable the Commission to redress wrongs of the character complained of in this proceeding. In

reaching this conclusion we are not required to resort to ingenuity in construction or to rest the argument upon a mere matter of punctuation as suggested by counsel. In our view any practice or regulation that unlawfully discriminates against one shipper and affords an undue preference to another shipper is a regulation or practice affecting rates within the meaning of that phrase as used in the clause in question. Any regulation or practice that withdraws from a shipper the equal opportunity of using and taking advantage of the rates offered by a carrier to the public is clearly a regulation or practice affecting rates in the sense in which that phrase is used in the amended act at the point in question. To hold otherwise, as the defendant urges, would be to put the narrowest possible construction upon these words, in disregard of the general objects and purposes of the enactment. And this we are not warranted in doing under any recognized rule of statutory construction, and more especially when a remedial statute is under consideration. After having vested in the Commission the power to redress wrongs arising out of unreasonable and unjust rates, we are not ready to accept the view that the Congress has contented itself with a mere admonition in the law against the great wrongs that may be done against shippers through unjust regulations and practices. That, as counsel contends, is exactly what has happened. Although Congress has declared such practices to be unlawful, counsel insists that it has omitted to give us the power to correct them. Setting aside as beyond the reach of the Commission the great body of rules, regulations, and practices of carriers that have to do with transportation, he says:

> Examples of regulations affecting rates are those fixing maximum and minimum carload weights, and that contained in the fourth clause of the uniform bill of lading which provides that all property transported shall be subject to necessary cooperage and baling at the owner's cost.

The maximum or minimum weight of a carload is not something affecting the rate, but is in fact a part of the rate, a factor which is just as essential to a correct statement of the rate as is the rate per 100 pounds itself. Nor do cooperage and baling affect the rate as such. They are simply special services performed by the carrier in transit when it is necessary to protect the shipment from damage or loss. Such services neither increase nor diminish the rate, but are charges entirely apart from the rate. While no other examples of rules or practices affecting rates are vouchsafed as by counsel to illustrate his conception of the meaning of that phrase, apparently he construes it as referring to rules or practices which in some way increase or diminish the amount of freight charges that the shipper must pay on a shipment.

The text itself does not justify that construction of the provision in question. It will be observed that the clause divides itself naturally into two parts; it authorizes the Commission, first, to consider the wrong alleged, and then to apply the remedy. If it shall be of the opinion after a full hearing that the regulation or practice complained of is unreasonable and unjust, the Commission may remedy the wrong by prescribing a just and reasonable regulation or practice thereafter to be followed by the carrier. In the first part of the provision reference is made to regulations or practices "affecting rates;" the remedy offered by the provision consists in the prescribing by the Commission of a just and reasonable regulation or practice with respect to "transportation." While there is here some contradiction in the words used, we do not understand that there is any contradiction in the real substance of the clause or in its meaning. Each part of the clause has a necessary relation to the other part, and the words "regulations" and "practices" as used in both parts must necessarily be used in the same sense. If they are not so used it is difficult to see how a wrongful regulation or practice "affecting rates," in the sense of affecting the amount of the freight charges on a shipment, could ordinarily be

cured by the substitution, as the clause now under consideration provides, of a just or reasonable regulation or practice in respect to "transportation." Obviously the two phrases refer to the same kind of regulations and practices, namely, the regulations and practices under which the transportation of interstate carriers is conducted. When both phrases are considered together and the whole clause is read in the light of the great purposes underlying the act, there is little difficulty in reaching the conclusion that the words "any regulations or practices whatsoever * * * affecting such rates" are used synonymously with the words "regulation or practice in respect to such transportation;" and that both clauses are to be read in the widest possible sense and embrace all regulations and practices of carriers under which they offer their services to the shipping public and conduct their transportation. We find no difficulty in holding, under section 15 of the amended act, that ample authority is vested in the Commission to deal with the undue preferences and unlawful discriminations forbidden under sections 2 and 3 and elsewhere in the act, regardless of the form of the rule, regulation, or practice under which such wrongs may be perpetrated.

Having disposed of the defendant's contention with respect to the question of jurisdiction, we come now to a consideration of the merits of the controversy. The first complaint made of the defendant's rules regulating the distribution of coal cars is that they do not provide that private cars belonging to individual operators shall be charged against their respective percentages, but permit them to be received by the individual mines in addition to the system cars which they are respectively entitled to in the general distribution. The same complaint is made with respect to what are ordinarily referred to as foreign railway fuel cars that are sent into the mining districts on the lines of the defendant by connecting lines, and are billed or manifested to particular mines with which the connecting carrier has made arrangements for securing the coal

required for its own use. Under the defendant's rules these cars ae delivered to the operator to whom they are consigned or manifested, without being charged against his percentages in the general distribution. And these practices the complainants insist are discriminatory in their results and therefore unlawful. These questions have been presented and elaborately argued before the Commission in other proceedings, and have had exhaustive and careful consideration. They will not, therefore, be further considered in connection with this complaint. It will suffice to say, in accordance with the announcement made in *Railroad Commission of Ohio* v. *Hocking Valley Ry. Co.*, 12 I. C. C. Rep., 398, that the view of the Commission is that the practice of the defendant is not charging private or individual cars against the percentages of the operators receiving them is unlawful and that such operators are not entitled in the general distribution of available cars to receive their respective proportions of the system cars in addition to their private cars. A like ruling must be made with respect to foreign railway fuel cars. As to the cars used by the defendant to secure its own supply of railway fuel no point is made in the complaint and no discussion was had on the argument. We shall therefore take no action with respect to such equipment. The principle clearly announced in the case referred to, both with respect to the so-called private cars and the so-called foreign railway fuel cars, is that while a carrier, during percentage periods, may not assign the private cars to operators other than their owners, and may not assign foreign railway fuel cars to any mines except those to which they have been manifested by the foreign line, it must nevertheless count all such cars against the distributive share of the respective mines to which the private cars belong or the foreign railway fuel cars have been consigned; and in case the private cars or foreign railway fuel cars so delivered to a mine do not fill out its distributive share of available cars, enough system cars are to be added to make up its share according to its rating. And

that principle must control the defendant's course in the future with respect to such cars. It may be well, however, at this time to say for the general information of those interested in such matters that in this proceeding, as well as in other proceedings that have come before the Commission, too little stress has been laid upon the very obvious relation between a shortage in cars and an insufficiency in motive power, in sidings, in tracks, in train crews, and other facilities necessary to the movement of traffic. A shortage of cars on a particular line does not mean that the supply of cars of that carrier has been diminished in number, but only that the volume of traffic offered exceeds the capacity of its available equipment to move it. A shortage in cars usually, if not invariably, is accompanied by a shortage in some one or more of the other facilities of the carrier. When it has not enough coal cars, it usually has not enough locomotives and other facilities to meet the demands of its coal shippers. That was the case in the *Hocking Valley case, supra,* and in this record sufficient testimony of that tenor appears to lend support to the disposition here made of that portion of the complaint. But this element in a shortage situation must not be overlooked by litigants who complain of the methods of carriers in the distribution of their equipment. Its importance is very clear. The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to have his private car attached to a locomotive in preference to a system car loaded by another shipper. The ownership of a private coal car or the possession of a foreign railway fuel car can give to an operator no preferred right to have it occupy a carrier's sidings or other tracks as against a system car loaded by another coal operator, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines.

And this shortage in other facilities which, as heretofore stated, rarely, if ever, fails to accompany a shortage in cars, has an important bearing up the matter of the distribution of cars, and underlies what the Commission has said on those questions in its formal decisions.

In support of the allegation that system cars are arbitrarily allotted to certain operators without regard to their percentage rating, the complainant's proof was very meager. The right of a carrier to make such arbitrary allowances for the purpose of enabling the owner of a mine reasonably to develop it, so as to put it in a condition to operate and make shipments, has been recognized, and we see no grounds for disturbing the right in this case. But any arbitrary allowance of cars made to an operator on other grounds should be closely scrutinized, and is an unlawful discrimination unless justified by special conditions. Without going into the details of the record in this connection, it will suffice to say that the defendant must adjust its practices in that respect in accordance with these well-defined principles. We shall expect no less of it with respect to the allegation that there has been discrimination in the distribution of cars between the several mining districts on its lines. There is very little specific testimony in the record to support this contention, but enough appears to suggest that the matter should be carefully reexamined by the defendant with a view to a more perfect apportionment of its equipment between the several districts. A fixed rule governing the distribution of cars among various districts presents a difficult problem. But we do not regard it as a difficult matter to arrive at some method that will have due regard to transportation conditions and at the same time will produce reasonably equitable results. On both these questions we shall make no order for the present, the record, as we understand it, not disclosing a sufficient basis for definite action.

The matter most discussed on the hearing as well as upon the argument was the method adopted by the defendant in rating mines for the purpose of establishing the

percentage of available car equipment to which they are respectively entitled in the daily distribution of cars during those periods when the demand for coal cars exceeds the supply. In this respect the basis of distribution long in force on the lines of the defendant differs from that adopted by other carriers whose methods for distributing cars have come before us upon formal complaint. In 1902 the defendant established a percentage basis consisting of two principal factors, (*a*) the physical capacity of the mines, and (*b*) the commercial capacity. The physical capacity is determined by the thickness of the coal seam, the number of rooms or working places, the capacity of the underground tram tracks, and the facilities for getting coal out of the mine into the tipple, and from the tipple into the cars. A fixed per diem value is assigned to a man's labor, taking into consideration the character of the seam upon which the work is to be done; and the number of places in which a man can work is taken into account regardless of the number of men actually employed. This in substance is the method generally adopted in arriving at the physical capacity of mines. But the defendant takes into consideration also what is referred to in the record as the commercial capacity of the mine, that is to say, the actual requirements of a mine for cars as tested by actual shipments made by the mine. This factor is arrived at by taking the volume of shipments made by the mine during a period of free car supply, usually of four months and generally from April 1 to August 1, in each of the two preceding years. In figuring the actual shipments made by a mine during these two free car periods, all its shipments are included except the shipments of fuel coal to the defendant company. These three factors, namely, the physical capacity, the commercial capacity for the first year, and the commercial capacity for the second year, are added together and divided by three. The result is the capacity basis for determining the percentage of available cars that a particular mine is entitled to receive during percentage periods.

This method of rating mines was adopted by the defendant in 1902, after a careful examination of the various systems in force on other lines. It was intended as a compromise between ratings based on physical capacity only and ratings based on commercial capacity only. The physical capacity basis is already well understood. The objection found by the defendant in that system was much like the defect condemned by the Commission in *Powhatan Coal & Coke Co.* v. *Norfolk & Western Ry. Co.*, 13 I. C. C. Rep., 69. In that case it appeared that the percentage rating of mines on the Norfolk & Western was based upon the number of coke ovens that had been erected by the respective operators. Many of the mines had erected coke ovens largely in excess of their requirements and solely for the purpose of increasing their percentages. The record showed that in the whole district but 52 per cent. of the ovens that had been built were in actual operation. The ruling of the Commission was that the mere number of ovens erected by a particular mine did not fairly measure its relative rights in the distribution of cars. In an examination of the situation on its lines, the defendant observed a like tendency. For the purpose of increasing their car percentage, the operators were developing the physical capacity of their mines beyond their actual selling capacity. This was was an economic waste for which the system adopted by the defendant was intended as a partial cure. Ratings based upon commercial capacity only are used on some lines and are built up on what is called the "surprise" test. Without previous notice a carrier for three or four days will supply a mine with all the cars that it can use, and in this way a test is made of its actual requirements. The defect in this system was that in some way the mine owner would learn that a test was about to be made and could thus prepare for it. The system in force on the lines of the defendant combines these two theories of distribution. By taking the physical capacity as one factor and as the other factor the commercial capacity, tested not during a period of three or four days only, but during the substantial period of four months in each of

two years when cars are abundant and can be supplied in sufficient numbers to meet all the requirements of the mines, it was thought by the defendant that a more equitable distribution would result. Manifestly a mine having a small physical capacity, but which has secured large contracts, would prefer a system based on commercial capacity only. On the other hand, an operator of a mine having a large physical capacity, but which has no large contracts, would prefer a system based upon physical capacity only. In combining the two systems the defendant has adopted a middle ground, apparently upon the thought that neither the physical nor the commercial capacity is always a fair test. We are not prepared on this record to say that there is no force in that view, and that a system of mine rating based upon a combination of the physical and commercial capacities of the several mines does not more closely approximate the actual car requirements of the mines than a system based upon physical capacity only.

But it is insisted by the complainant that the mine receiving foreign railway fuel cars and private cars during the free car periods is thereby able to increase its percentage rating as compared with the operator who receives no foreign fuel or private cars. It is urged that the operator who happens to have contracts for delivering coal during the free car periods, or whose sales are increased during those periods because of personal connections with coal dealers and consumers, is given an undue advantage when, in addition to the physical capacity, the actual shipments for the two preceding years are added for the purpose of arriving at his percentage basis; and that the method of rating mines by taking into consideration the previous shipments not only results in increasing the percentage of certain operators, but ultimately results in increasing the actual physical capacities of such mines. It may be that this is true. But is the defendant's system of car distribution on that account necessarily unlawful? It is not unlawful for coal operators to have contracts to supply connecting railway lines and private industries; and it does not follow because a large operator has large contracts

that he is getting an undue or unlawful advantage under this system of car distribution over small operators in the same district. While the operator with large contracts may be able to keep his mine running more constantly and at a lower cost per ton, and may develop it more rapidly and thus in the progress of time be able to enlarge its percentage in the car distribution, nevertheless if that opportunity be open under the defendant's rules and regulations to all operators we do not clearly see on what ground the system must be condemned. Certainly the record does not advise us of any specific instances of discriminatory results to the smaller operators arising out of the defendant's system. The attack upon it is based largely upon the mere opinions of a few operators who testified that the system was unfair to operators having no contracts. As the record now stands the Commission is asked to hold, as a matter of law rather than as a fact demonstrated by actual experience, that the defendant's method of rating mines is unduly discriminatory, and that the only proper and lawful basis for the distribution of coal cars among the mines of a coal district is their respective and relative physical capacities.

Neither this record nor the records in other proceedings and investigations relating to coal-car distribution justify us in holding as a fixed rule of law that the physical capacity of the several coal mines in a given district is the only lawful factor upon which a system of car distribution may be built up, and that their actual requirements or commercial capacity may not lawfully be considered in the distribution. As at present advised the Commission is not in possession of sufficient information upon which to base such an announcement for general application. It seems to be rationally and logically a question of fact to be determined according to the circumstances and conditions existing in each particular case. When examined from that point of view no such showing is to be found in this record as will enable us properly to enter an order sustaining the complaint in that respect. The present system of rating mines has been in effect on

the lines of the defendant for some years. Apparently it is satisfactory to the great body of the coal operators served by the defendant; out of the 340 mines on its lines operated by about 200 different companies, only three or four operators are shown by the record to be of the opinion that the percentage basis works unfairly and disadvantageously. Upon such a showing we are unwilling to disturb the situation and see no just grounds for doing so. But we base this view on the record only and are not to be understood as closing the question to further consideration. All we desire to be understood as saying at this time is that a method of mine rating that is apparently satisfactory to the great body of coal operators on a carrier's line ought not to be disturbed except upon a stronger showing than is here made.

Finally complaint is made of what is called "pooled percentage." The defendant permits the car percentages of several mines controlled or operated by one company to be grouped or pooled upon one or more of the mines; that is to say, if a company owning and operating four openings is entitled in the daily distribution to 25 cars for each mine it may group or pool all these cars or any portion of them at one mine instead of using them at each mine in accordance with their respective percentages. This practice is complained of as an unjust discrimination on the ground that it permits a mining company rapidly to develop one mine after another and thereby to increase the percentage ratings of the several mines; and also that it enables a mining company to operate one or more of its several mines to a larger daily capacity and thereby reduces the cost per ton of the coal produced. Here also the record is lacking in sufficient facts and leaves us to a consideration of this complaint as a hypothetical one and as a question of law. Without committing ourselves at this time to any final opinion on the question, it will suffice to say that no sufficient showing has been made to enable us to say that this practice is unlawful and results in fact in undue and unlawful discriminations.

An order will be entered to give effect to these views.

EXHIBIT L.

No. 1063.

Hillsdale Coal & Coke Company

vs.

Pennsylvania Railroad Company.

Submitted January 25, 1909. Decided March 7, 1910.

1. To the physical capacity of a coal mine the defendant adds its commercial capacity tested by the shipments made from it during the preceding twelve months, and divides the sum by two; these two factors being revised quarterly the mine is thus given a constantly corrected rating in the distribution of coal cars during percentage periods. If this basis is equitably applied to all mines served by the defendant the Commission is unable to see that it results in an unequal, unfair, or discriminatory distribution of its equipment.

2. The complainant's contention that physical capacity alone is the fair and sound basis for rating coal mines for car distribution is not sustained; the utmost obligation of a carrier under the law is to equip itself with sufficient cars to meet the requirements of a mine for actual shipment; and it is no real concern to the carrier what are the physical possibilities of a mine in the way of daily output except as that factor may afford some measure of what its actual shipments will be.

3. The commission reaffirms its previous rulings to the effect that the owner of private cars is entitled to their exclusive use and that foreign railway fuel cars assigned to a particular mine cannot be delivered to another mine; but it again holds that all such cars must be counted against the distributive share of the mine receiving them. It is therefore *Held*, That the defendant's rule, providing that the capacity in tons of such "assigned" cars shall be deducted from the

rated capacity of the mine receiving them and that the remainder is to be regarded as the rated capacity of the mine in the distribution of all "unassigned" cars, is unlawful and discriminatory.

4. The defendant's contention that, so long as the petitioner receives all the coal cars it is entitled to, it has no right to complain because some other operator receives an undue proportion of cars is not sustained. The law not only gives the shipper a right to an equal or a justly ratable use of the facilities of an interstate carrier but the assurance also that no other shipper shall fare ratably better at the hands of the carrier.
5. The question of damages which the complainants claim to have suffered as the result of the discrimination herein found to have been practiced against it, reserved for further argument.

David L. Krebs and Harry White for complainant.

Francis I. Gowen, George V. Massey, and Murray & O'Laughlin for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

In this group of cases, of which the above-entitled complaint has been selected as the one in which the views of the Commission may best be expressed, the petitioners bring to our attention the method or rules in effect on the lines of the defendant, during the period mentioned in the complaints, for the distribution of coal cars among the coal mines which the defendant serves. In each case the petitioner demands an order by the Commission requiring the defendant so to change or modify its rules that the distribution of its coal-car equipment may be made on what they regard as a more equitable and just basis. Damages in large amounts are also asked in order that the several complainants may be compensated for losses which they claim to have suffered by reason of the alleged failure of the

defendant during the period of the action to give them the number of cars that they were justly entitled to receive.

The consideration of these complaints has been deferred because, when they were submitted for decision, there were pending in the lower courts and before the Supreme Court of the United States cases involving not only the question of the soundness and legality of the rulings heretofore made by the Commission respecting the distribution of coal cars by interstate carriers, but involving also the power and authority of the Commission to control and enter orders in respect to the practices of interstate carriers in such matters. Under the circumstances it seemed wise to await the final disposition of those cases in the court of last resort before making any further announcement of our views with respect to the matter of coal-car distribution; and this course seemed particularly desirable in view of the fact that the defendant in this proceeding, although not a party to any of the appeals in the Supreme Court of the United States, had been permitted, upon its special request and because of its interest in the questions involved, to participate in the argument and presentation of the cases before that court.

The general status of the question before the Commission may be readily ascertained by an examination of our decisions in one or two formal proceedings since the passage of the so-called Hepburn Act. In *Railroad Commission of Ohio* v. *H. V. Ry. Co.*, 12 I. C. C. Rep., 398, we held that while a carrier during periods of car shortage might not assign privately owned cars to operators other than their owners, and might not assign foreign railway fuel cars to any mines except those to which they had been manifested by the foreign lines, it must nevertheless count all such cars against the distributive share of the respective mines to which the private cars belonged or to which the foreign railway fuel cars had been consigned; and in case the private cars or foreign railway fuel cars so delivered to a mine were not sufficient to fill out its distributive share of available coal cars, it should have in addition only so many of the system cars of the carrier as might be necessary, when

added to the private or foreign railway fuel cars so received by it, to make up its full ratable proportion of the total available coal cars of all classes. We also held that all foreign railway fuel cars consigned to a particular operator, and all private cars owned by a particular operator, must be delivered to that operator, even though their number might exceed the ratable proportion of the particular mine in the distribution of available cars.

The order then entered to give effect to these conclusions was accepted by the defendant in that proceeding. But when the same general principle was applied by the Commission in *Tracy* v. *C. & A. R. R. Co.*, 13 I. C. C. Rep., 451, to the distribution of company fuel cars the defendant in the latter proceeding declined to accept our order either as one within the power of the Commission to enter or as a just and proper disposition of the contention made upon the record. In the same report we disposed of similar complaints by the same petitioner against the Illinois Central Railroad Company and the Chicago, Peoria & St. Louis Railway Company. These companies also declined to obey our order. The result was proceedings in the United States circuit court for the northern district of Illinois, the Illinois Central and the Chicago & Alton being the moving parties, in which that court held that the complainant carriers were not entitled to relief from that part of the orders of the Commission that required private and foreign railway fuel cars to be taken into account against the distributive share of the coal companies receiving them, but were entitled to an injunction restraining the enforcement of the orders of the Commission in so far as they related to the cars employed by the complaining carriers in hauling their own fuel coal. From this decree an appeal to the Supreme Court of the United States was prosecuted by the Commission and the whole question was considered by that tribunal in *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 215 U. S. 452, and *Interstate Commerce Commission* v. *C. & A. R. R. Co.*, 215 U. S. 479, in which decisions have lately been announced.

The court there held, as the Commission had previously held in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. Rep., 86, that the basis adopted by an interstate carrier for the distribution of coal cars among coal operators upon its lines was a regulation or practice "affecting rates" as that phrase is used in section 15 of the amended act to regulate commerce, and as such was a matter within the regulative power of the Commission. It was also held that the fuel cars of an interstate carrier, in which it hauls fuel for its own use, are instruments of interstate commerce as fully as are its system cars in which commercial coal is hauled for shippers; and consequently "that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equitable distribution and the prevention of an unjust and discriminatory one." Drawing attention to the distinction that must necessarily be observed by the courts between the power to regulate and the unwise exercise of the power in a given case, that court disclaimed for itself, and also denied to any other federal court, the right to usurp the purely administrative functions of the Commission by substituting a regulation that the court might deem wise for one which it considered the Commission in the exercise of its conceded power had inexpediently adopted. The decree of the lower court enjoining the enforcement of the order of the Commission, in so far as it related to the distribution of company fuel cars, was therefore reversed.

It thus appears that the orders of the Commission with respect to the distribution of coal cars by interstate carriers, as expressed in the several cases referred to, remain unaffected by the attacks that have been made upon them in the courts. And our further consideration of these questions in connection with this group of cases has confirmed our conviction that the general principles underlying the disposition made of the previous cases are both sound and just. We shall therefore proceed to ascertain what has been and is now the practice of the defendant in respect to the distribution among coal operators of its available coal-car

equipment, and how far it differs, if at all, from what the Commission has regarded and, in the cases referred to, has announced as the just and equitable basis of distribution. It may be well, however, first to say a word in respect to the method or basis in effect on the lines of the defendant for assigning to each of the coal mines that it serves a daily output rating for determining its proportion in the distribution of coal cars, that being one of the practices of the defendant of which complaint is made by the petitioner herein, as well as by the petitioners in the other cases in this group.

In *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. Rep., 86, it appeared that the method of rating mines adopted by that carrier involves two principal factors, (*a*) the physical capacity of the mine, and (*b*) its commercial capacity. The physical capacity is ascertained in the manner explained in our report of that case (*id.*, p. 93) and the method need not therefore again be described. It will suffice to say that it is substantially the plan now generally followed by coal-carrying roads. The commercial capacity, or the requirement of a mine for cars as tested by its actual shipments, is arrived at by taking the volume of the shipments made by a mine during a period of free-car supply, usually of four months and generally from April 1 to August 1, in each of the two preceding years. The three figures, expressed in coal tons, namely, the physical capacity, the commercial capacity for the first year, and the commercial capacity for the second year, are added together and the sum is divided by three. The result is the capacity basis that is established by the Baltimore & Ohio for determining the percentage of the available coal equipment that the particular mine is entitled to receive during any period of car shortage. After a careful consideration of the system as applied to interstate shipments, we were inclined to think and so intimated (*id.*, p. 96), that a method of rating coal mines based upon a combination of their physical and commercial capacities more closely approximates their actual car requirements than a system based upon physical capacity only.

But in this petition the complainant, as we understand its attitude, demands that the commercial capacity of the mines served by the defendant shall be eliminated as a factor in fixing their rating and that their physical capacity shall be accepted as the sole factor for determining their respective proportions in the distribution of coal cars. The defendant, while combining the physical with the commercial capacity, does so in a way that differs somewhat from the plan in effect on the Baltimore & Ohio. To the physical capacity of a mine it adds its commercial capacity for one year only and divides the sum by two. The commercial capacity, however, is not based upon shipments made from a mine during a substantial period of free-car supply, as is the case on the Baltimore & Ohio, but upon the entire volume of shipments made from the mine throughout the preceding twelve months. The ratings are revised quarterly on February 1, May 1, August 1, and November 1; the rating of any particular operation will also be revised by the defendant upon request regardless of the quarterly tests. In other words, the commercial capacity of each mine is brought up to date at each quarterly rating period by taking into consideration its new tonnage for three months and adding to it the tonnage of the preceding nine months previously used in the preceding rating. In this manner the defendant endeavors to follow up as closely as possible the fluctuations in the market, labor conditions, and car supply. By combining the commercial capacity of a mine, thus ascertained and constantly brought up to date, with its physical capacity, the rating of the mine in the distribution of coal-car equipment is determined. And if this system of rating is equitably applied to all mines served by the defendant we are unable, so far as our investigations to the present time have informed us on the question, clearly to see upon what grounds it may be said to result in an unequal, unfair, or discriminatory distribution of its equipment.

But, as heretofore stated, the complainant insists that the physical capacity of a mine is the sole and only proper basis for determining its rating for purposes of car distribu-

tion. The economic waste involved in a system that leads operators to develop their mines beyond their commercial requirements and for the sole purpose of increasing their percentage of coal-car supply was discussed in *Rail & River Coal Co.* v. *B. & O. R. R. Co., supra.* While an order of the Commission in a particular case must necessarily fix the rights of the parties to the proceeding, so far as past shipments are concerned, and must necessarily restrain, until our further order, the continuance of the rate or practice that we condemn, and compel the carrier to observe the rate or practice that we prescribe for the future, these great questions of transportation are not foreclosed of further discussion and consideration upon further complaint. Additional experience with the actual operation of rules that combine commercial with physical capacity in the rating of coal mines for car distribution, may throw new light upon a matter that has vexed the Commission as well as many carriers that have endeavored to do equity as between different mines on their lines; and if so, we shall not hesitate to modify what has been said here and in other cases before us on that question. The principle of *stare decisis* has little application in proceedings before us involving questions of this nature. But at this time and upon the present state of our information and experience in the matter we can not accept the complainant's contention that physical capacity alone is the fair and sound basis for rating mines for car distribution. Speaking in precise terms, it is of no real concern to a carrier how large a particular mine may be and what are its possibilities in the way of daily output, except as those factors may afford some measure of what its actual shipments will be. The utmost obligation that the law lays upon the carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of a mine as expressed in its physical development, but to meet his actual shipments. A mine rating that is adjusted to the expectations of the operator and altogether ignores his actual requirements might easily result, in a period of car shortage, in giving

him cars for every ton of coal that he can actually dispose of, while an adjoining mine, with a small development but a large demand for its output, would get but a fraction of the equipment that it needs to meet its actual contracts.

In *Powhatan Coal & Coke Co.* v. *N. & W. Ry. Co.*, 13 I. C. C. Rep., 69, the record showed that thousands of dollars had been expended in the erection of additional ovens, not for actual use or to meet any commercial demand for more coke, but solely for the purpose of securing additional cars in the distribution by the carrier of its equipment during car shortage periods; and we have condemned a rule for the distribution of coke cars that ignored actual shipments and was based solely on the number of coke ovens that had been erected by the different coke companies. Nothing has since developed, or was suggested in this proceeding, to change our view on the general question, and the complainant's contention that physical capacity is the fair and reasonable basis for rating mines for car distribution must therefore be dismissed as untenable.

We come now to the practice of the defendant in the past and at the present time in the distribution of its available coal-car equipment.

Under a rule announced by it on February 1, 1903, the defendant seems to have charged all railroad cars, regardless of ownership, and private cars not owned by the operator loading them, against the distributive share of each mine, but it treated its own fuel cars as a special allotment in addition to the distributive share. On March 28, 1905, a notice was sent to shippers of bituminous coal from mines on the lines of the defendant advising them that thereafter all railroad cars, regardless of ownership, and all private cars not owned by the operator loading them, should be considered as cars available for distribution, except its own company fuel cars and fuel cars sent upon its lines by foreign companies and specially consigned to particular mines.

On January 1, 1906, the defendant divided all cars into two classes which it designated as "assigned" and "un-

assigned" cars. In the former class were its own fuel cars, foreign railway fuel cars, and individual or private cars loaded by their owners or assigned by their owners to particular mines. The rule then made effective and still in force provides that the capacity in tons of any "assigned" cars shall be deducted from the rated capacity in tons of the particular mine receiving such cars, and that the remainder is to be regarded as the rated capacity of the mine in the distribution of all "unassigned" or system cars. This order or rule of the defendant was the occasion of some comment in *Logan Coal Co.* v. *P. R. R. Co.*, 154 Fed. Rep., 497, 498, where the Court says:

> To illustrate the effect of the order on an individual number of cars as compared with a competitor receiving only company cars, take two operators each having mines rated at 500 tons a day, and assume that on any given day the company has enough of its own cars on hand to deliver to all mines cars which would take care of 70 per cent. of the output. Assume that one operator has individual cars available on that day for the shipment of 200 tons, while the other has no individual cars at all. The latter receives railway company cars capable of carrying 70 per cent. of 500 tons, or 350 tons. The former, on the day in question, will receive individual cars in which he can ship 200 tons, and his rating for a distribution of the company's cars for that day will be reduced to 300 tons, 70 per cent. of which is 210 tons, for the transportation of which he will receive company cars, so that the operator with the individual cars will be able to ship on the day instanced 410 tons, as against the shipment of 350 tons by the operator who has no individual cars. To this extent the relator has the advantage over its competitors who do not own individual cars, and it receives the exclusive use of its cars at all times.

The results arrived at by the court in its illustration seem to us not quite accurate, in that the total car capacity

of 700 tons assumed by the court is made up of the company's system cars, and excludes from consideration the fact that one of the mines had on hand individual cars having a capacity of 200 tons, making a total available car capacity of 900 tons. Worked out on the basis of that total car tonnage the owner of the private cars would receive equipment enough to enable him to ship 463 tons and not 410 tons as stated by the court, while the mine depending upon system cars only would be able to ship 437 tons instead of 350 tons as stated by the court. The court used a car capacity of 70 per cent. as the total available equipment for the output of both mines instead of a car capacity of 900 tons, or 90 per cent., which was actually on hand in the case assumed. In other words, the court absorbs in its illustration only 760 tons of the output of the two mines, while the facts assumed show that car capacity of 900 tons was available. Under the Commission's rule each mine under these circumstances would have been able to ship 450 tons.

Using the same two mines with an assumed capacity of 500 tons each a day and available equipment with a total capacity of 70 per cent. or 700 tons, including the individual cars with a capacity of 200 tons owned by one of the mines, the rule of distribution which this Commission has approved in *Railroad Commission of Ohio* v. *Hocking Valley Ry. Co.* and *Tracr* v. *C. & A. R. R. Co., supra,* would result in giving the latter mine its individual cars of 200 tons capacity and system cars enough to absorb 150 additional tons, or a total of 350 tons, being one-half of the available equipment tonnage. The mine not owning the individual cars would get the other half of the available equipment tonnage, but all of it in system cars. Under the defendant's rule, on the other hand, the mine owning the individual cars would receive them and would thereby be able to ship 200 tons of its total output capacity of 500 tons a day. The rating of this mine would then be reduced to 300 tons a day as against the rating of 500 tons assigned to the mine owning no private cars, the total reduced rating

for the two mines being 800 tons. Instead of 700 tons the equipment remaining available for distribution would carry but 500 tons, of which the mine owning individual cars would get three-eighths, or 188 tons, making its total tonnage 388 tons, while the other mine would get five-eighths, or system cars of a capacity of 312 tons, an advantage of 76 tons enjoyed by the mine owning private cars in the distribution of all available equipment. That mine under the defendant's rule would therefore be able to ship out between 20 and 25 per cent. more coal than its competitor, while under the rule approved by the Commission the shipments of the two mines would be the same under the facts assumed by the court in the case cited.

Referring to system fuel cars and foreign railway fuel cars consigned to a particular mine, the court in *Logan Coal Co.* v. *P. R. R. Co., supra,* said, p. 503:

> The general trend of the decisions is to the effect that all cars, whether individual cars or owned by the railroad company, or assigned by other railroad companies for fuel, shall be treated as an available car equipment as a whole, distributive pro rata to shippers desiring their use along the line, upon a basis giving each equal facilities with the other. Following are some of the cases in which these questions have been considered: *United States ex rel. Coffman* v. *N. & W. Ry. Co.* (C. C.), 109 Fed. Rep., 831; *United States ex rel. Kingwood Coal Co.* v. *W. Va. & N. R. R. Co. et al.* (C. C.), 125 Fed., 252; *W. Va. & N. R. R. Co. et al.* v. *United States ex rel. Kingwood Coal Co.*, 134 Fed., 198, 67 C. C. A., 220; *United States ex rel. Greenbrier Coal & Coke Co.* v. *N. & W. Ry. Co.*, 143 Fed., 266, 74 C. C. A., 404; *State ex rel.* v. *C., N. O. & T. P. Ry. Co.*, 47 Ohio St., 130, 23 N. E., 928; *United States ex rel. Pitcairn Coal Co.* v. *B. & O. R. R. Co. et al.*, 154 Fed. 108.

That is the general theory for the distribution of coal-car equipment that has appealed strongly to this Commission as being fair, reasonable, and non discriminatory. We

recognize the right of a company to contract with a particular operator for its fuel supply; we recognize the right of a connecting line also to do this; and each may send its cars to those mines to the exclusion of other mines. We also insist that the owner of private cars is entitled to their exclusive use. But in each case we hold that all such cars must be counted against the distributive share of the mine receiving them. When subjected in all its different phases to the scrutiny of the Supreme Court of the United States in the cases just decided and announced (*supra*) the position of the Commission in this matter was not found objectionable either on legal or constitutional grounds. And as the exhaustive arguments and our further consideration of the same questions in these proceedings have not given us any new light or led us to any different conclusions, the rulings in the previous cases must control the disposition of the complainants in this group of cases so far as they may be pertinent.

Upon all the facts shown of record the Commission therefore finds that throughout the period of the action the system upon which the defendant distributed its available coal-car equipment, including system fuel cars, foreign railway fuel cars, and individual or private cars, has subjected the complainant to an undue and an unlawful discrimination. In this connection an important disclosure is made in a letter of record here, addressed to the president of the Clark Brothers Coal Mining Company under date of March 6, 1907, by the general superintendent of coal transportation of the defendant company. It is there stated that the distribution of coal cars on the lines of the defendant on that date was as follows:

	Per cent.
System cars for company coal	21
Foreign cars for supply coal	6
Individual cars	45
System cars for commercial coal	25
Foreign cars for commercial coal	3
Total	100

This condition of affairs emphasizes the inequity of a system of distribution that first deducts from the rated capacity of a mine the tonnage represented by the capacity of the cars specially assigned to it and then uses the remainder as a new basis for determining the proportion of unassigned cars that the mine is to have. The figures above given show that 72 per cent. of all the cars available on the lines of the defendant on the date mentioned were assigned cars, and but 28 per cent. were unassigned cars. Manifestly such a basis of distribution can have but one tendency, and that is, not only to steadily increase the physical capacity of the mines that regularly receive this large percentage of assigned cars, but also steadily to increase their commercial capacity, an advantage which the mines having the benefit of no assigned cars obviously can not enjoy. With such a large percentage of assigned cars it can not be doubted that the equipment furnished to some of these mines was sufficient to approximate their ratings, while the small percentage of unassigned cars makes it equally clear that the mines having no other cars must have fallen substantially short of their ratings.

We further find that the continuance of that system of distribution for the future would be unlawful on the same grounds. Although the mine owning private cars or to which company or foreign railway fuel cars are consigned is entitled to receive them even though in excess of its ratable proportion of all available coal-car equipment, nevertheless the defendant will be required in the future to count all such cars against the distributive share of the mine so receiving them. It is scarcely necessary to add that the complainant's second request for a finding and for an order requiring the defendant, during percentage periods, to distribute ratably among operators, according to the actual output capacity of their mines, "all cars adapted to and used for carrying bituminous coal," whether company fuel cars, foreign railway fuel cars, or private cars, must be denied.

In view of our finding herein that the practice of the

defendant in not counting assigned cars against the ratings of the mines has been discriminatory and has resulted in injury to the complainants in this group of cases, it is suggested that it will not be fair or equitable to content ourselves with the condemnation of that practice and the entry of an order requiring a different practice for the future; such a course, it is said, will leave the complainants under the disadvantage that the practice has wrought in the past, while giving to the favored mines the results that have wrongfully accrued to them. In other words, it is said that, under the rules here condemned, the preferred mines have been able year by year to enlarge their commercial output while the commercial output of the complainants and others has been restricted; and that justice requires that there shall be a new point of departure, at least for the present, based solely upon the respective physical capacities of the mines on the lines of the defendant. Exact justice is ordinarily not attainable. It is difficult no less for this Commission than for a court to deal with such a situation as this with mathematical accuracy. The most that either may hope to accomplish in such a state of facts is to do substantial justice; and this we do, so far as it seems to us possible, when we require the defendant to adjust its rules on a proper basis for the future, and give to the complainants the opportunity to have their injuries redressed in the form of damages. While the tendency of the prior rules must have been to enlarge the commercial capacity of the preferred mines, we can not doubt that their physical capacity has also been enlarged. And we have no assurance that an order requiring the defendant, for the present as suggested, to distribute its cars on the basis solely of physical capacity would not, in some cases at least, work very substantial injustice.

That the practices of the defendant with respect to the rating of mines and the distribution of coal-car equipment were, to some extent at least, in a loose and unsatisfactory condition prior to 1905 not only appears in this record, but in the record of the coal and oil investigation made by the

Commission under the joint resolution of the Congress approved on May 7, 1906. There seems at that time to have been a more or less well-defined policy on the part of the defendant to discourage the opening of new coal operations. But just how far this condition of affairs, prior to January 1, 1906, when the new regulations went into effect, may adversely have affected the complainant in a financial sense it is impossible upon this record to say. The increasing price received for coal in the general markets suggests the possibility that the coal not mined at that time may subsequently have been mined and sold to the complainant's advantage. There are one or two other matters, however, of which complaint is made and to which it may be well here to refer.

The evidence shows that quite frequently, just how often not appearing, cars were placed at the mines of the petitioner too late to be loaded on that day, and one of the complaints made in the petition is that prior to January 1, 1906, the defendant charged such cars against the complainant's allotment not only for the day on which they were so placed but also against its allotment for the following day. It is even said that the complainant's mines were charged with cars placed there during the night. At the time in question, whatever may now be the case, it was the custom of the miners to enter the mines at 8 a. m., and under the rules then in effect, if cars were not on the siding ready for loading at that time but were received later during the day they would not be loaded until the next day. It does not appear just what the defendant's system was prior to January 1, 1906, with respect to the counting of cars placed at the mines for loading and not loaded until the following day. But the distribution sheets after that date contained a rule as follows:

> A car placed too late for loading will not be counted as available for loading until the following day. A car available for loading and not loaded will be counted each day in column headed "Empty cars over" until loaded or otherwise disposed of. A car loaded and

not consigned will, unless consigned on the unloading day, be counted each day in column headed "Unconsigned loads over" until consigned.

No claim is made upon the record that this rule, which seems still to be in effect, does not give fair results or that there is any discriminatory practice being carried on with respect to this phase of car distribution. So far as concerns the defendant's practice before that date there seems to be no indication of any discrimination in this respect against the complainant in this or in the cases that follow it; nor is there any evidence that other mines were unduly favored in that regard.

It also appears that at an expense of about $5,000 the complainant had constructed a tipple at its mine No. 2 and also a siding connecting it with what is known as the "Fuller Run tracks," a road about one mile long extending from the defendant's line to mines from which shipments had been made for a number of years, but which at this time seem to have been closed. From its mine No. 2 the complainant was ready to make shipments in April, 1903, but the siding, as it asserts, was spiked down by the defendant and kept in that condition for about nineteen months. Requests were made by the complainant from June 28 to July 31, 1903, for cars enough to ship 100 tons of coal per day from that mine. But no cars were furnished by the defendant until January 17, 1905, and then only after mandamus proceedings had been instituted in the courts. The defendant's failure to supply cars for that mine, while supplying cars to other mines in the district, is one of the discriminations alleged in the complaint. What reason it had for refusing or failing to set cars there is not satisfactorily explained of record. But for some reason also not explained the complainant allowed the matter to rest in that condition for many months without taking any steps against the defendant and without even renewing its demand for cars so far as the record discloses. It is not clear, moreover, that the alleged closing of that siding by the defend-

ant can fairly be regarded as a basis for a charge of discrimination; it has more the character of a tort or a wrongful violation of the defendant's general duty to the complainant as a common carrier for which an appropriate action in the courts would doubtless lie to recover any damages thus sustained.

It is also asserted by the complainant that its mines were unfairly rated when compared with the ratings assigned to other mines in the same district and that as a result of this discrimination it suffered substantial losses. Although it appears that the capacity assigned in 1903 to certain of the mines of Williams & Company in the same mining district was greater than that established for the same mines in 1906 after a more accurate system of mine rating had been devised, the proof is not sufficiently clear to permit of a definite finding of a discrimination against the complainant in that respect. It does appear that prior to January 1, 1906, the rating assigned to mines in the nine coal-mining districts on the lines of the Pennsylvania were made, with the approval of the general superintendent, by division superintendents upon the general information of the latter officials, derived from observation and their general knowledge, and not upon any definite principle or plan for rating mines. The ratings, therefore, varied in accordance with the information and ideas of the different superintendents. We do not in fact understand the defendant to claim that there was any real system of mine rating in effect at that time. This lack of system was indeed characteristic of other large coal-carrying lines at that time, as is shown in the report of this Commission to the Senate and House of Representatives in the investigation to which reference has just been made.

The defendant meets this point by asserting that the real question to be determined is whether the complainant received less than its proper share of the cars distributed by the carrier during periods of scarcity of equipment and that it is not material that some other coal operator may have received more than his quota of available cars. In

other words, the contention is that so long as the complainant received all the cars it was entitled to it has no right to complain that some other coal shipper, as the result of a high mine rating or otherwise, secured an excessive proportion of the available cars, if this preference was not at the expense of the complainant. We must reject that view. The act to regulate commerce as amended not only gives a shipper a right to an equal or a justly ratable use of the facilities of an interstate carrier, but gives him the assurance also that no one else shall fare ratably better than he does at the hands of the carrier. It may be true that a court would not allow the complainant damages for losses due to the defendant's failure to furnish it cars that it was not entitled to receive, but this Commission may surely require an interstate carrier to cease and desist from giving its competitor more cars than the competitor is entitled to receive.

But upon this part of the case the complainant's own witnesses do not sustain it to the full extent of its contentions, and we can only express the general impression that neither in its rating nor in its car supply did the complainant fare as well at the hands of the defendant as it possibly should have done. We find it impossible, however, to arrive at any clear or accurate statement of the extent of the discrimination. Williams & Company, its chief competitor in that district, received many more cars than the complainant and their mines enjoyed a higher capacity rating than was assigned to the mines of the complainant. They sold large quantities of coal to the defendant for use in its locomotives, and these cars were not counted against Williams & Company. While there was doubtless some discrimination in these matters, as there certainly was in the defendant's failure to count its own fuel cars against those mines, it is difficult, if not impossible, to assign definite boundaries to it and to say at this time what should have been the rating of the respective mines and what should have been the proportion of each in the distribution of the defendant's coal-car equipment.

It is suggested that under its corporate charter, granted by the State of Pennsylvania, the defendant is not only a common carrier or transporting agency, but that its rails are at the same time a public highway, and it must therefore haul loaded or empty private cars for their owners upon reasonable terms. There is in its charter some language to that effect; and in *Boyle v. P. & R. Ry. Co.*, 54 Pa. St. Rep., 310, cited by counsel for the defendant on the argument, the Supreme Court of Pennsylvania held that a similar charter of another company in that state contemplated such a dual use of the road, by the company itself as a carrier in transporting the freight of shippers and by the owners of cars as a public highway substantially in the sense that a canal or turnpike is a public highway. Counsel, therefore, contends that the dual capacity in which the defendant is required to serve the public, as shippers and as car owners, necessarily eliminates from the case the argument that individual cars or private coal cars must be treated as railroad-system cars for purposes of allotment or distribution. It is urged that private cars may properly be counted against the mine owning them only in the manner and to the extent that the defendant's present rules take them into account in periods of car shortage.

Without entering upon any discussion of the extent to which the terms of a charter granted to a carrier by a state may control or limit the performance of its functions and obligations as an agency of interstate transportation, it will suffice to say that in none of its decisions relating to coal-car distribution has the Commission undertaken to forbid the use of private cars by their owners, even though in a period of car shortage the number of cars owned by a mine may enable it to load daily more than the number of cars that it would receive if dependent solely on its share of system cars. On the contrary, the Commission has not only recognized the right of carriers to move private cars, but has insisted that the owners may not be deprived of the use of their individual cars and that such cars may not be thrown into the general pool of system cars and thus be

diverted to the use of other operators. As the Commission has made no ruling that conflicts with the rights and obligations arising under the defendant's charter as construed by the state Supreme Court, we need not, and do not, here consider what the situation would be if the terms of its state charter required the defendant carrier in the distribution of its coal-car equipment to work an undue discrimination against an interstate shipper in violation of the act to regulate commerce as amended.

The petitioner in this complaint bases its claim for damages on the amount of coal that it might have mined, if the defendant had furnished it with a sufficient supply of cars to enable it to work its mines twenty days a month during the period covered by the complaint. It also claims that the cost of mining the coal actually taken out during the period in question was higher than it would have been had the defendant furnished it with an adequate supply of cars, thus enabling it to operate its mines to the best advantage by running them regularly and to their full capacity. In making up the amount of its claim the petitioner excepts a period of four months during 1906 when its miners were on a strike and takes the average selling price of coal during the remainder of the period covered by the action. It deducts as the cost of mining an amount per ton that is estimated as the probable cost had the defendant furnished the complainant with cars enough to enable it to run its mines at full blast and with the regularity that produces the best results. Upon this general basis the complainant asserts that it has been damaged as the result of the alleged discriminations against it by the defendant in the sum of $127,855.65, and for this amount it asks an award at the hands of the Commission.

The complaint herein was filed before our decision in *Joynes* v. *P. R. R. Co.*, 17 I. C. C. Rep., 361, was announced. In that proceeding damages were demanded for losses alleged to have been suffered in the decay of the complainant's fruit by reason of an alleged discrimination against him in favor of other dealers in fruit to whom

the defendant, as the complainant contended, had given a preferred use of its unloading platform, thus delaying his shipments until the fruit was spoiled. We held, upon grounds that are there fully stated and need not be repeated here, that while the Commission was competent to find that a discrimination had been practiced, the measurement or ascertainment of the damages the complainant had suffered in consequence thereof was a judicial question for the courts and not for the Commission; the view expressed was that the only damages that may be assessed by the Commission under the amended act were rate damages or damages that could be measured by the difference in the rate actually charged and the rate which, for any reason under the act, ought lawfully to have been charged; and that the complainant's remedy for the damages in compensation of the loss suffered in the value of his fruit was in the courts.

That case differs from this in that it involved a single wrong in the nature of a tort against a particular shipper, while this case in its larger aspect involves the validity of a rule for car distribution applicable alike to all coal shippers on the line of the defendant and resulting, as we have pointed out, to the benefit of some shippers and to the injury of others. We have found that in the particulars herein explained, discrimination was practiced, and have held that for such damages as resulted the complainant is entitled to recover from the defendant. As to whether we may go beyond the transportation question, the alleged discriminatory rules and practices, and enter upon an inquiry as to the amount of the damage that may have been suffered by the complainant, the Commission is divided as in the case to which we have just alluded. The majority is still of the opinion that it is not for us under the law to assess and determine the measure of the damages thus sustained by the complainant, that being a judicial question for the courts. At the most any finding by the Commission as to the amount of damages would be the expression of an opinion that could not be enforced by the Commission and would have no conclusive and binding effect upon the court

to which, in any event, resort must be had by the complainant for a finding and judgment in the usual manner required by fundamental law. The minority, conceding some of the difficulties to be encountered in dealing with such matters, nevertheless interpret the law as necessarily casting that burden upon the Commission.

Since our decision in *Joynes* v. *P. R. R., supra,* was announced, our attention has been called to an opinion by Judge McPherson of the United States District Court, sitting in the Circuit Court of the United States for the Eastern District of Pennsylvania, in *Morrisdale Coal Co.* v. *P. R. R. Co.*, 176 Fed. Rep., 748 (advance sheets of May 12, 1910). That was an action by the coal company against the defendant herein to recover damages in the sum of $250,000 for the sales and contracts that are alleged to have been lost because of the discrimination resulting from the same coal-car distribution rules that are involved in the proceeding now before us. Citing *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S., 426; *Baltimore & Ohio R. R. Co.* v. *U. S.*, 30 Sup. Ct., 164; and *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 173 Fed. Rep., 930, Judge McPherson holds that the Commission and not the courts has primary jurisdiction to award reparation for the general damages of that character that may have resulted from a preferential practice in the distribution of coal cars during a percentage period. The case brings a new element into the situation. That is the court whose jurisdiction this complainant would doubtless invoke in order to secure pecuniary redress for the wrongs which the complainant claims to have suffered as the result of the discrimination we here find to have been practiced against it and others by the defendant. There is possibly no necessary conflict between the view there expressed and a refusal by the Commission to measure the complainant's damages in this case, after having found that a discrimination existed; but there is some danger, in view of the ruling of the court in that case, that justice may be defeated altogether in this case if we proceed no further with it. We

have concluded therefore to order a further argument early in the fall with respect to the amount of damages suffered by the complainant in this proceeding, and by the petitioners in the other cases in this group of complaints, as the result of the discriminations that we find to have existed. Under all the circumstances, this seems the prudent course to pursue. The order of the trial court dismissing the action of the Morrisdale Coal Company, for want of jurisdiction, has been taken for review to the Circuit Court of Appeals; and if our further consideration of this group of cases results in awards of damages to the complainants and they resort to the courts for their enforcement, in case payment is contested by the defendants, the courts will then have the whole question before them and some definitive interpretation of the act with respect to the extent of the authority of the Commission and the courts in this regard will follow, and this is highly desirable for the future guidance of both.

An order will be entered in accordance with these conclusions.

PROUTY, *Commissioner*, dissenting:

Although I am myself of the opinion that this case has been sufficiently talked about and sufficiently considered, and that it ought to be finally disposed of, still if the majority deems it necessary to hear further argument upon the question of damages, I do not dissent from that course. I do not agree with the holding of the majority that this Commission has no authority to assess and award these damages, and while it is not now proposed to make any order from which I dissent, I wish to express my views upon that subject.

To my mind there is a clear distinction between the *Joynes case*, 17 I. C. C. Rep., 361, and the one before us.

Joynes was a fruit merchant located at Pittsburgh, whose complaint was that the defendant had systematically delayed the movement and delivery of his traffic, in comparison with that of his competitors, whereby he had suffered serious

damage. The act of the defendant was alleged to be in violation of the third section and the holding of the Commission was that, even if in violation of that section, damages could not be awarded by the Commission. No rate, regulation, or practice of the defendant was involved. The act complained of was personal to Joynes. While it seems to me that under the terms of the eighth and ninth sections of the act Joynes, in a case like that detailed, had a cause of action for the recovery of damages against the defendant which he might prosecute before this Commission, it also appears to me that he might have brought his complaint in the first instance before the court. Had he begun such a suit it would not have been obnoxious to the objections sustained by the court in the *Abilene case*, 204 U. S., 426, or the *Pitcairn case*, 215 U. S., 481.

In the case before us this is different. Here is not a particular discrimination arising out of the conduct of the defendant toward a particular shipper, but rather a discrimination which inheres in a rule of the defendant applicable to all shippers and presumably enforced alike as to all shippers. While the courts might well be invested with exclusive jurisdiction to hear and determine suits like that of Joynes, it seems to me that in the case before us the Commission not only must, under the statute, but should, as a matter of convenience, award damages.

Sections 8 and 9 in my opinion give to the complainant a right of action for damages against the defendant and confer upon it the privilege of applying to this Commission for an order awarding those damages. It is impossible for me to put any other meaning upon the plain language of these sections, which read, so far as material to this question, as follows:

> SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the

person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt.

Here is a claim statement that in case of a violation of the act resulting in damages to any person the carrier shall be liable for such damages, and an equally explicit declaration that the recovery of such damages may be had either by a proceeding before the Commission or by suit in court; but that both remedies shall not be pursued for the recovery of the same damages.

The reasons of the majority for declining to exercise this jurisdiction, which is explicitly conferred by the ninth section, are stated in the *Joynes case*. It is there said in substance that damages resulting from a violation of the act may be divided into two classes, "rate" damages and "general" damages. By rate damages are meant those damages which can be ascertained by computation from a reference to the rates of the carriers only. The Commission determines what the reasonable rate ought to be; it determines what rate has been paid; the damages are the difference between the rate exacted and the rate which

should have been exacted. These damages the Commission can and should award.

General damages may involve a consideration of all those elements which enter into the determination of damages in other cases. There is no exact measure by which such damages can be computed. To assess them involves the consideration of evidence and the exercise of judgment. For the assessment of such damages this Commission has no greater qualification than a jury. Therefore, it is assumed that Congress, notwithstanding its express language to the contrary, did not intend to confer upon the Commission authority to deal with damages of that character.

In support of this somewhat novel canon for the interpretation of statutes the Commission refers to the action of the Supreme Court of the United States in the *Abilene case, supra,* in which that court held that, notwithstanding the language of the ninth section, by which a claimant is given an election between his suit in court and his proceeding before the Commission, nevertheless, in certain cases, the proceeding must be in the first instance before the Commission and can not be in court. Just as the Supreme Court in that case has read out of the ninth section the right to begin certain cases before the courts, so the Commission now proposes to read out of that same section the right to proceed in certain cases before the Commission.

I can find no case in which the Supreme Court of the United States has ever undertaken to qualify the express language of an enactment upon the ground adopted by this Commission in the *Joynes case.* That court has repeatedly said that courts have nothing to do with questions of expediency. Whether a statute is wise or unwise, whether it is expedient or inexpedient, whether the object aimed at is reached in the best way or not, are questions for the legislature, not reviewable by the courts. The *Abilene case,* as I read it, not only fails to sustain the position of this Commission in declining to accept jurisdiction in matters like that before us, but, upon the contrary, plainly holds, both by necessary inference and by express language, that in a case

like the one now under consideration the only tribunal in which complaint can be brought and damages obtained is this Commission. If that be so, it is certainly the duty of the Commission, no matter how inconvenient the exercise of that function may be, to entertain the complaint, determine as best it can the damages, and award those damages by its order.

It should be clearly understood at the outset just what that violation of the act is of which complaint is made and for which damages are demanded.

It is true upon most coal-carrying roads, and was true upon the lines of the defendant during the period covered by this complaint, that in times of an active coal movement there are not sufficient cars to supply the demands of all mines. The amount of business which the miner can do depends upon the number of cars which he can obtain for the movement of his product. To furnish one mine with cars while they are denied to a competing mine means that the favored mine shall do business while the other stands idle. This renders preference in the furnishing of coal cars, a most serious form of discrimination, and makes necessary the establishment of definite and uniform rules and regulations for the distribution of such cars to different operations during the period of car shortage.

The complainant alleges that the system under which the defendant distributed its coal cars was unlawful and discriminatory, in that certain classes of cars were furnished to mines in competition with it and not counted against the distributive quota of those mines, which resulted in the giving of more cars to its competitor than it was justly entitled to have. The allegation is not that the defendant made the complainant the object of any special act of discrimination. It did not unfairly apply its system of distribution in determining the number of cars to which the complainant was entitled, nor did it fail to deliver at the complainant's mine the cars to which it was entitled under the scheme in force; but it applied a system or a practice which in its working out was unjust and discriminatory to the complainant.

The Commission finds that the method of distribution in force as to all shippers upon the lines of the defendant during the period covered by this complaint was unlawful and discriminatory and has directed the establishment of a different system for the future; but it declines to consider to what extent the complainant has been injured by the application of this practice, and to ascertain and award the damages which, confessedly, must have accrued.

To my mind there is no distinction between a practice of this kind and a rate. Every reason which requires the Commission to entertain claims of unreasonable rates and to award damages if the claim is sustained, requires with equal force that claims on account of discrimination by the application of general rules and practices of this character should be made in the first instance to the commission and that damages should be awarded if the practice is found unlawful. If any distinction can be drawn between instances in which the Commission may and may not award damages for a violation of the act, that distinction should be founded, not upon the character of the damage, but upon the character of the act out of which the damages grows. If the thing alleged to be unlawful is a rate, regulation, or practice of general application which touches the entire shipping public alike, over which the Commission has control, with respect to which it must determine the reasonableness, and as to which it could order the substitution for the future of a different rate, regulation, or practice, then the proceeding for damages must be begun in the first instance before the Commission, and it is the duty of the Commission to ascertain and award the damages. This position is fully sustained by the recent decisions of the Supreme Court.

Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S., 426, is familiar to all and only the briefest reference to it is needful.

The Cotton Oil Company claimed that certain rates imposed by the defendant for the transportation of cotton seed were excessive and brought suit in court to recover the amount of the excess. The transportation was interstate

and the rates charged were those established under the provisions of the act to regulate commerce. The railroad defended upon the ground that a rate so established was conclusive upon all the world until changed by the Interstate Commerce Commission; that no suit could be brought either at common law or under the ninth section, but that the complainant must begin his proceeding by filing claim before the Commission.

This contention was sustained by the Supreme Court in a convincing opinion. Said the Court: The fundamental purpose of the act is to prevent preference and discrimination. For this purpose it is required that rates shall be established and notice given to the public in a certain specified manner and that the rate so established shall be collected of all shippers alike. If, now, suit can be brought for a recovery of a portion of this rate in the first instance, either in court or before the Commission, at the election of the shipper, it may follow that one jury will determine one rate to be reasonable, another jury a second rate to be reasonable, while the Commission may be of the opinion that still a third rate should be charged. This will of necessity produce the every discrimination which the act was intended to prevent. To give such a construction to the language of the ninth section would be to destroy the act itself.

It was held therefore in that case that the only remedy of a shipper for the payment of an excessive rate was to apply to the Commission, which, if it held the rate to be excessive, should order the establishment of a reasonable rate for the future and award damages to the complainant upon the basis of the rate so established.

Let it be carefully observed that this conclusion was not reached because the Commission was an expert body, more competent to determine the reasonableness of a rate than a jury; nor because the rate was filed in its office and under its direction, and could, therefore, be more conveniently ascertained and applied; nor for any consideration of expediency or convenience, but because the opposite holding would

accomplish the very thing which the act to regulate commerce was intended to prevent.

This further situation might arise: If a rate has been pronounced unreasonable by the Commission and reduced, or if a rate has been voluntarily reduced by the carrier without any action of the Commission, may a shipper, with respect to a time anterior to the action of the Commission or to the reduction of the rate, maintain a suit in court for the payment of the excessive rate?

Apparently, the same reasoning which leads to the conclusion that application must be first made to the Commission in case of an existing rate would lead to the same conclusion with reference to a rate no longer in effect, for if such suits could be brought in court it might follow that one shipper would in fact pay one rate and another shipper another rate. Such is the conclusion of the court, which, on page 442, says:

> * * * Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force.

And, again, on page 446, the following language is used:

> * * * And like reasoning would be applicable to the granting of reparation to an individual after the establishment of a new schedule because of a wrong endured during the period when the unreasonable schedule was enforced by the carrier and before its change and the establishment of a new one. In other words, the difference between the two is that which

on the one hand would arise from destroying the uniformity of rates which it was the object of the statute to secure and on the other from enforcing that equality which the statute commands.

It appears, therefore, that whether the rate to be attacked is still in force or has been superseded by a lower or different rate, the complaint must be addressed in the first instance to the Commission, which is required to determine a reasonable rate and to award damages or reparation upon that basis. Whether, after the Commission has determined that a certain rate should have been charged during a given period, a shipper having paid the higher rate can begin suit in court in the first instance for the recovery of the excess, I express no opinion. It is evident that the discrimination complained of would not arise provided the rate fixed by the Commission could in any way be made conclusive in the suit instituted in court. However that may be, it is clearly the right of the shipper under all circumstances to file his claim with the Commission in pursuance of the provisions of the ninth section, and it is clearly the duty of the Commission, in the opinion of the Supreme Court, to entertain the claim, prosecute the inquiry, *and award the reparation.*

I am unable to see any valid distinction between an excessive rate and a rule or practice for the distribution of coal cars like that involved in this proceeding. In each case the rate or regulation is of universal application. In either case to apply one rule to one shipper and another rule to another shipper must result in preference. In each case the Commission has power to inquire whether the existing rate or regulation is lawful and to prescribe another in substitution for the future. No reason is urged by the court in the *Abilene case* in justification of its holding there which would not apply with equal force in support of a similar holding here. That this must be so is no longer debatable since the decision of the Supreme Court of the United States in *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 215 U. S., 452, by which it was affirmed that the authority of this

Commission over a regulation for the distribution of coal cars is exactly the same as its authority over the rate of transportation itself.

The Illinois Central Railroad is a large carrier of coal and establishes, in common with other coal-carrying railroads, rules for the distribution of coal cars, in times of car shortage, between the different mines served by it. Complaint was made to the Commission that the method of distribution in force upon the Illinois Central resulted in unjust discrimination against the complainant. There was no question as to the manner in which the capacity of the mines was ascertained and the percentage to which each mine was entitled determined, but it was asserted that certain classes of cars were not counted against the assignments of the mines to which they were deliver ¹. In allotting cars the Illinois Central, according to its regulations, did not count private cars which were owned by the mine, foreign railway fuel cars which had been delivered to the Illinois Central by some other railroad for the purpose of being taken to a particular mine, and the fuel cars of that company itself which were used in transporting coal from the mine to the place where it was to be used by the railroad. The complainant contended that all these classes of cars should be counted against the assignment of the mine.

The Commission held with the complainant and made an order directing the Illinois Central to count all such cars in the future. That company conceiving this order to be unlawful petitioned to the circuit court for the northern district of Illinois for an injunction against its execution. Upon hearing that court was of the opinion that the order of the Commission was correct as to private cars and foreign railway fuel cars, but incorrect as to company fuel cars, and an injunction was accordingly issued restraining the operation of the order as to such company fuel cars.

From this the Commission appealed to the Supreme Court of the United States, which reversed the decree of the circuit court and sustained the order of the Commission in full.

The contention before the Supreme Court was that the only order which the Commission could make under the fifteenth section was one prescribing a rate or a rule, regulation, or practice affecting a rate; that this regulation, while the effect of it might be to prevent discrimination, was not a regulation affecting rates and therefore not within the power of the Commission to make. The court held that a regulation of this kind was within the terms of the fifteenth section; that, therefore, the Commission might prescribe the rule which it did, and that such rule when prescribed would be binding upon the Illinois Central in its relations with all its coal mines.

This case determines that there is no distinction between an order of this Commission fixing the rate for the future and an order establishing a rule for the distribution of coal cars; and this being so, I am utterly unable to see any ground upon which a distinction can be made between the remedy which is open to the shipper for the recovery of damages in the two instances. If he must, in case of the excessive rate, apply to the Commission in the first instance, so in the case of the discriminating practice he must first make application to this body. To permit the institution of a suit in court until the rule has been fixed by the Commission would result in exactly the same discrimination and preference in case of the regulation touching the distribution of cars as it would in case of the excessive rate. It must follow as a necessary inference from this decision that courts are without jurisdiction to entertain in the first instance suits for damages resulting from the enforcement of improper rules for determining the capacity of its coal mines and the distribution of its coal cars in times of shortage between the different mines served. Any possible doubt upon this point has been laid at rest by the decision of the Supreme Court in *B. & O. R. R. Co.* v. *Pitcairn Coal Co.*, 215 U. S., 481, decided at the same time with the *Illinois Central case* just referred to.

The twenty-third section of the act gives a remedy through the district and circuit courts of the United States

by mandamus in instances where a carrier is granting a preference in the movement of traffic or in the furnishing of cars or other facilities. The Pitcairn Coal Company, claiming that the Baltimore & Ohio Railroad was discriminating in favor of its competitor by the rules which it had established to govern the distribution of coal cars, began proceedings for mandamus against that company. It is not necessary to detail the various specifications of preference set forth in that proceeding. The general system of car distribution in vogue on the Baltimore & Ohio was analogous to that established by the Illinois Central, and the grounds of complaint, while more numerous in this case than in that, had mainly to do with the failure to count different classes of cars.

After an elaborate hearing upon the facts the circuit court sustained the contention of the relator, the Pitcairn Coal Company, upon a single item, denying in the main the prayer for relief. Upon appeal by the Pitcairn Company, the circuit court of appeals reversed the court below and held that the relator was entitled to the relief prayed for. The Supreme Court of the United States, upon appeal by the Baltimore & Ohio Company, decided that the circuit court had no jurisdiction under the twenty-third section, and that the suit should be dismissed. It placed its decision entirely upon the *Abilene case*, pointing out that there was no distinction between a rule or regulation of this character and a rate, and that therefore suit should have been begun in the first instance before the Commission.

It is therefore now determined beyond controversy that the complainant in the case before us could not at the time this complaint was filed have commenced in court, either at common law or under the twenty-third section, or under the ninth section, a suit at law, for a correction of the discriminations complained of or the recovery of the damages incident upon those discriminating practices. It must have applied to this Commission. How, then, can this body consistently decline to exercise the jurisdiction which is plainly cast upon it by the statute as interpreted

by the court of last resort and refuse to pass upon its claim for damages?

The opinion of the majority indicates that complaint may be made to the Commission, which will thereupon determine whether the regulation attacked is or has been in violation of law. If the Commission condemns the regulation, the complainant must then begin an independent suit in court for the recovery of his damages, upon the basis of the regulation approved by the Commission. The theory seems to be that the Commission has jurisdiction to prescribe the rule, but has no jurisdiction to award damages which have resulted from failure to establish and observe a proper regulation in the past.

I express no opinion as to whether, if this Commission has definitely determined that a given rate or a given regulation for a definite period has been discriminatory or excessive and has prescribed the rate or regulation which will be reasonable or just, a shipper may or may not begin suit in court for damages based upon the rate established by the Commission. Such a rule would not be obnoxious to the objections found by the Supreme Court to the maintenance of the suits of the Abilene Cotton Oil Company and the Pitcairn Coal Company. It may be that such instances would present an opportunity for the alternative mentioned in the ninth section. I also think that a case like that of Joynes, where the act of the carrier is directed to a particular individual and does not consist of the enforcing against the public of a general rate, regulation, or practice, presents an instance where the party aggrieved may either sue in court or present his claim to the Commission. But this complainant must have begun before the Commission and the Commission should have jurisdiction to award the damages.

Upon what theory does the conclusion of the majority to the contrary rest? What is there in the language of the act which supports it? What is there in the structure of the act which lends countenance to it? To my mind both the language and the theory of the statute are directly opposed to it.

Nothing can be plainer than that Congress intended to confer upon this body the authority and to lay upon it the duty to award damages for infractions of the act. This idea runs through the entire framework of the statute.

Section 9 provides that the person damaged may apply to the Commission or may bring suit in court, but shall not adopt both remedies for the same violation.

Section 13 provides that if the carrier "shall make reparation for the injury alleged to have been done, such carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of."

Section 14 provides that "in case damages are awarded such report shall include the findings of fact on which the award is made."

Section 16 declares that if the Commission shall determine that any party complainant is entitled to an award of damages it "*shall* make an order directing the carrier to pay to the complainant the sum to which he is entitled, on or before a day named." The same section fixes the period of time within which claims for damages shall be filed with the Commission and within which suits shall be begun in court to enforce the orders of the Commission awarding damages. That section also prescribes in detail the legal proceedings by which an award of damages may be enforced against the defendant.

Up to the time of the *Joynes case* it had been, as is pointed out by Commissioner Lane in his dissenting opinion in that case, 17 I. C. C. Rep., 361, the uniform practice of the Commission to award reparation in all cases where damages accrued from a violation of the act.

It is said that the Interstate Commerce Commission is an expert tribunal and that the assessment of damages is not within the range of its expertness; that it is an administrative body, and that the determination of damages is judicial and not administrative; all of which amounts to saying that the Commission is not qualified to deal with this question.

To this I am not prepared to assent. I can not admit that this body is not as well qualified as a traverse jury to

assess the damages of these complainants. For years we have investigated, in one form and another, in all its ramifications, the business of mining and selling coal. We understand, as no jury without that knowledge possibly could, the effect of this discrimination upon the business of the coal operator. In my judgment the decision of the Commission would be more intelligent and less likely to be influenced by prejudice than that of a jury. But all this is entirely beside the mark; Congress, in set terms, has made it the duty of this Commission to award damages, and it is no concern of ours whether that provision of law is wise or unwise.

It is said that the Commission has no time to deal with such matters, and it certainly is true that its duties are various and exacting. But this, again, goes to the expediency, and that is not for our consideration; we can not decline to attempt to discharge the duties prescribed by the statute because it is incovenient to do so.

The opinion of the majority holds that the complainant must first obtain from the Commission a finding that the regulation in effect has been discriminatory and determining what regulation ought to have been maintained; armed with this finding he may then bring suit in court for the recovery of his damages. It seems to me that certan practical difficulties will be found in the application of such a rule, one of which is suggested by the present case.

The complaint asks damages from 1903 to the present time. The Hepburn Act provides that suits for the recovery of damages shall only be entertained by the Commission when filed with it within two years from the time the cause of action accrues, but it further provides that within a year from the passage of that statute complaints may be filed embracing all damages which had previously accrued. This complaint was seasonably filed to recover damages for the period named.

The complainant has diligently prosecuted its complaint, and now obtains a holding from the Commission that the regulation attacked is unlawful. If our order be made

effective on June 1, 1910, it would follow that the complainant is then for the first time in position to maintain a suit in court.

But the order of the Commission fixing this regulation as to the distribution of coal cars is not of necessity final. It may be attacked in the courts by the railroad, and still another period of from one to three years may elapse before it is finally determined what regulation should have been in force during the period when these damages accrued.

What, now, is the rule to be applied as to the running of the statute of limitations? The usual period of limitations applicable to suits for the recovery of damages of this character is from three to six years. If the six-year period were to be applied the complainant has lost his damages for at least one year. Having seasonably begun his proceeding in the only forum in which it could be begun, and having prosecuted that proceeding with all diligence, he is, nevertheless, deprived of the right to the damages for a portion of the period.

It may be suggested that the filing of the complaint before the Commission may be regarded as the beginning of the suit which is subsequently brought in court. But there is no connection whatever between the proceeding before the Commission and the suit in court. All allegation as to damages for discrimination is immaterial and out of place before the Commission. And what of the competitors of the complainant who have suffered the same discrimination? Must these parties all file suits before the Commission to determine the regulation which ought to have been observed by the railway, although the determination in one case must of necessity control in all cases?

It may be said that a complainant should begin two proceedings, one before the Commission to determine the regulation or practice and another in court for the assessment of his damages, and that the suit in court should be continued until the Commission has prescribed the rule. But the statute explicitly declares that while the party injured may

begin either before the court or the Commission he shall not begin in both places.

The seventh amendment to the Constitution of the United States provides that in suits at common law where the value in controversy exceeds $20 the right to trial by jury shall be preserved. The effect of this constitutional provision, if any, upon the question before us, is yet to be determined by the courts.

The original act to regulate commerce provided that an order for the payment of damages should be enforced by the court sitting as a court of equity. Under this state of the statute the Commission held that it could not award damages, where a determination of fact was necessary, for the reason that the parties would thereby be deprived of their right to a jury trial. For the purpose of removing this objection the act was amended March 2, 1889, so as to provide that where suit was brought to enforce the Commission's order for damages either party might demand a jury trial. That the Commission understood that under the law as amended it could and should award damages appears from the following language, which occurs in the last case in which an award of reparation was refused upon this ground. *Rawson* v. *Newport News & Mississippi Valley Co.*, 3 I. C. C. Rep., 266, 279:

> As to the reparation claimed, prior to the amendment of the sixteenth section of the act to regulate commerce on March 2, 1889, we held in several cases, that as the statute provided for no trial by jury in the courts to enforce our awards in controversies such as were triable at common law and where more than $20 was involved, we could award no reparation in consequence of the provisions of the seventh amendment to the Constitution of the United States. The amendment of the statute of March 2, 1889, was made to cover this feature of the statute, but the amendment expressly provides that it shall have no reference to proceedings pending at the time the amendment was adopted; and this proceeding was pending at that time.

In my own view a proceeding to recover damages for failure of a railroad company to publish and maintain a certain rate or regulation is not a suit at common law within the meaning of the seventh amendment. The legislature may prescribe either by itself or through a commission the rate or regulation to be observed. Neither the shipper nor the carrier has any right at common law to a particular rate, nor need the reasonableness of the rate prescribed by the legislature be submitted to a jury. The legislature might undoubtedly enact that the published rate or regulation should be binding upon all until changed. If, now, it allows reparation with respect to the past it may do so upon condition that the amount shall be determined in a specified manner not involving a trial by jury.

The opinion of the majority makes no reference to the seventh amendment, nor do I see that the conclusion reached derives any support from that source, since that amendment must apply equally to the assessment of all kinds of damages. In awarding "rate" damages the Commission must determine the existence of certain facts, as the weight of the shipment, its character, the conditions of the billing, etc.; and these findings of fact may be conclusive upon the right of the complainant to recover. If such findings must be submitted to a jury in one class of cases they must in the other.

The delays and the expenses of the law are proverbial. Especially is this true where the defendant is a railroad company with unlimited resources. It is notorious that shippers forego claims which they believe to be just rather than incur the cost and annoyance of attempting to enforce them by law.

One cardinal purpose of the act to regulate commerce was to provide a speedy and inexpensive method by which the shipper could obtain relief in such cases. My own observation is that, to an extent, this expectation of the framers of the act has been realized. The complainant does ordinarily obtain his order for damages with less delay and

outlay than in court, and the railroad generally pays the award.

The complainant claims to have been damaged by more than $100,000 through the discrimination which we have found to exist, and its evidence tends strongly to support that claim. A material part of these damages never can be recovered unless awarded in this proceeding, and that through no fault of the complainant, which seasonably began and has zealously prosecuted its complaint. Days have been spent in the taking of testimony; all the facts are before us, and I strongly feel that we should proceed to assess and order the payment of these damages.

The opinion of McPherson, Judge, in *Morrisdale Coal Co. v. P. R. R. Co.*, 176 Fed. Rep., 748, which has come to my attention since the foregoing matter was prepared, fully sustains the position taken.

There are two other points to which I wish to call attention.

This record indicates that at times the number of private cars delivered to certain mines has exceeded the quota of those mines. Even if private cars had been counted against the assignment of those mines, they would still have received more cars in proportion to their rating than the complainant.

In such case it seems to me that the railroad is guilty of discrimination, although it delivers to the mine only the cars which that mine owns. If, for example, a railroad only had sufficient cars for its own fuel supply the mine owner who did not sell coal to the company and who owned no cars himself, would obtain no cars whatever, while his competitor with an outfit of individual cars would be supplied. I do not think a railroad can lawfully devote its tracks and its motive power to the service of one mine, while declining to give to its competitor a similar service.

Probably, in the absence of contract provisions thereto, a railroad would have no right to divert the cars of one mine to the use of another, but it might and should decline to put private cars into service except upon condition that there shall be no discrimination of this kind.

This may not be a matter of much importance in the present case. The use of private cars is growing less, and the question will, in all probability, never be a living one. I do not, therefore, care to discuss it, but wish simply to note my position. In the matter of car distribution every car should, in my opinion, be treated as though owned by the railroad upon whose line it is in service.

The rule approved by the Commission for the rating of mines takes account both of physical capacity and commercial sales; and this, I think, is correct. When, however, the output has been limited by inability to obtain cars, and when that inability has been due to the discriminating practices of the defendant, it is evident that the application of this rule perpetuates at the outset the effect of the past discrimination. The complainant, owing to this descrimination, has not been able to sell as much coal, in comparison with its competitor, as it otherwise would, and therefore its rating upon this basis is not what it justly should be. For this reason it seems to me that it would be more just to begin upon the basis of physical capacity alone and subsequently introduce the factor of commercial sale, considering no sales which had been made under the discriminating rating.

LANE, *Commissioner*, also dissenting:

I am in full accord with that part of the Commission's report which condemns the existing car distribution rules of the Pennsylvania Railroad Company and prescribes the rules which shall be observed in the future, but I can not agree that the Pennsylvania Railroad Company's method of rating mines for purposes of car distribution is unobjectionable.

Under the recent decisions of the Supreme Court this Commission has been vested with what amounts to absolute authority over car distribution rules. Under an extension of the doctrine laid down in the *Abilene Cotton Oil case* it is now the law that a shipper does not have the right, before appealing to the Commission, to invoke the aid of a court of law in order to compel a carrier to furnish the

transportation facilities to which the shipper believes he is entitled. It is further established that the courts will not inquire into the reasonableness of the rules prescribed by the Commission nor disturb the Commission's orders unless it appears that some constitutional guaranty has been violated or that the Commission has not proceeded in accordance with law. These decisions cast upon the Commission a responsibility as to railroad practices equal to that which rests upon it as to railroad rates. This body is made in the first instance the sole resort of the shipper; from our decision the shipper has no appeal, while the carrier's right of review is limited to questions of law. In the great majority of cases, therefore, our judgment must be a final determination of the questions involved. In view of this responsibility the decision in this case becomes of first importance.

Rules for the distribution of cars in periods of car shortage are of very recent invention, and it has appeared affirmatively in the cases which have been brought before this Commission, as well as in those before the courts, that the whole question of car distribution is in a state of flux; the carriers have not yet devised a code of rules which is satisfactory either to themselves or to their shippers. It is a matter of most general knowledge, brought out and clearly established in the coal investigation made by the Commission some three years since, that the distribution of cars to coal mines has been based largely upon interest, prejudice, and pull. There has been little, if any, pretense that cars were divided among coal mines upon a basis which the law could recognize as fair and nondiscriminatory. Since this investigation it appears that the carriers have been making an honest effort to establish rules which would not be open to objection upon the ground of discrimination, but these rules are as yet but experimental—they do not represent the crystallized experience of years—at present they are but tentative. The preferences which have been shown to owners of private cars and to mines supplying railway fuel show clearly that the carriers are but feeling their way

to a basis that will be more equitable than any hitherto obtaining. Instead, therefore, of regarding the rules involved in the cases recently reviewed by the Supreme Court as controlling this Commission, we are justified in saying no more upon this subject than that the views heretofore expressed are the result of such light and experience as we have been able to gain upon a most difficult subject, and are properly subject to amendment at any time. Moreover, it must be remembered that the Commission has not given its endorsement either to physical capacity or commercial capacity or to a blend of the two as a basis for the allotment of cars subject to distribution in a time of shortage.

As explained in the majority report, the Pennsylvania Railroad Company fixes the rating of a mine for purposes of car distribution by adding to the ascertained physical capacity the commercial output of the previous year and dividing the sum by two. I am not convinced that past commercial performance can be fairly taken as a measure of present day needs. However, conceding that a mine's past shipments under normal conditions may properly be taken into account, it is clear that they do not afford an index of actual shipping capacity when they have been affected by numerous discriminatory practices. The undisputed testimony in this case shows that the complainant has been subjected to gross discrimination. The complainant was often compelled to go without cars for days at a time while certain of its competitors had no difficulty in securing an abundant car supply. The record further shows that the Pennsylvania Railroad Company spiked the switch leading to the mine of the Hillsdale Coal & Coke Company so that for nineteen months the complainant was unable to ship a ton of its output. This latter circumstance, according to the majority report, does not constitute unjust discrimination. If inequitable car distribution rules can be held discriminatory, and the Commission so finds, how can we look with greater benignity upon the absolute refusal of the defendant to serve one shipper while transportation facilities are freely accorded to his competitors? The indisposition of the ma-

jority to attach any importance to this phase of the complaint is inexplicable. In my opinion the spiking of the complainant's switch by the Pennsylvania Railroad Company constitutes unlawful discrimination in its most vicious aspect.

Be this as it may, the finding of the Commission is as follows:

> Upon all the facts shown of record, the Commission therefore finds that throughout the period of the action the system upon which the defendant distributed its available coal car equipment, including system fuel cars, foreign railway fuel cars, and individual or private cars, has subjected the complainant to an undue and an unlawful discrimination.

From this finding it necessarily follows that the output of the complainant's mines during the period in question does not fairly measure its normal commercial capacity. Its shipments have been arbitrarily and unjustly restricted by the operation of the unlawful rules of the defendant, and when this Commission permits the Pennsylvania Railroad Company to take that restricted commercial output as a factor in determining the rating of the mine for purposes of car distribution, it is obvious that the past discrimination is being indefinitely perpetuated. This proposition seems so self-evident that it ought not to be necessary to support it by illustration. Let us take the case of a mine the physical capacity of which is 500 tons per day. By reason of the discriminatory practices of which it has been the victim its commercial output during the past year was restricted to 250 tons per day. A competitor, on the other hand, with the same physical capacity as well as the same business efficiency, was favored by the carrier and thereby enabled to market all the coal that it could produce during the preceding year. Under the rule which we are now considering the rated capacity of the mine which has been the victim of discrimination is some 375 tons per day, while that of the favored mine is 500 tons per day. Again, take the case of

a mine whose switch was spiked so that it had no output whatever during the past year. Under the Pennsylvania Railroad Company's rule its present physical capacity of 500 tons is added to its past commercial capacity (zero) and the sum divided by two, the result being 250 tons, the rating of the mine for purposes of car distribution. Can there be any question that by sanctioning this rule we are permitting the defendant to prolong its discriminatory practices indefinitely? It would appear that this discrimination will be progressively diminished as the years go by, but this, I submit, does not temper the injustice of the rule.

The majority report commends the method employed by the Baltimore & Ohio Railroad Company in rating mines for purposes of car distribution. Under the Baltimore & Ohio rule the ascertained physical capacity is taken in conjunction with the commercial capacity during a period of free car supply in each of the two preceding years, and the result divided by three. This method is even more objectionable than that of the Pennsylvania Railroad Company. In the first place it should be observed that we are considering rules for the distribution of cars during a period of car shortage. It is obviously unscientific, therefore, to look to a mine's output during a period of free car supply as an index of its probable needs during a period of car shortage. "A period of free car supply" necessarily connotes a season of slack demand. This means a period during which many of the weaker mines find it unprofitable to operate at all, whereas the operations which are more firmly established, and which perhaps have large contracts to fill, occupy the field almost alone. On the other hand, a period of car shortage connotes a period when the demand for coal has been so increased that all the mines find it profitable to operate. In view of these considerations I regard it as indisputable that commercial output during a period of free car supply is not an equitable measure of probable output during a period of car shortage.

In the second place it should be remembered that the Baltimore & Ohio rule was expressly condemned by the

Commission in its report following the coal and oil investigation in these words:

> The effect of the system of car distribution in use upon the Baltimore & Ohio Railroad, and especially the method of ascertaining the percentage of cars to which each shipper is entitled by taking the output in the summer time, resulted in increasing the percentages of the large operators with which the Baltimore & Ohio Railroad Company was interested and in irregular and insufficient car service to the smaller operators who did not own "individual cars" and who by lack of regular car service were unable to make satisfactory contracts for the sale of their output.

Consistency alone would seem to require a similar finding in the case now confronting us; but aside from that I feel that the facts developed in that investigation, as well as in other proceedings before this Commission, conclusively demonstrate the injustice of this rule. The Commission states, on page 59 of its Report on Discriminations and Monopolies in Coal and Oil:

> During this period of remarkable growth in the coal tonnage on said road (the Baltimore & Ohio Railroad) the increase of its equipment and betterment of its roadway, some coal operators were compelled to dispose of their plants at a loss because they were unable to get cars; other persons, during the same period, desiring to become shippers, were subjected to serious discouragements, that being the policy of the road.

Citations need not be multiplied in order to make it clear that the past output of a mine under the conditions heretofore obtaining affords no criterion of its normal commercial capacity.

Perhaps the most serious fault in the Baltimore & Ohio rule is this: The element of commercial capacity, which may have been arbitrarily diminished by the unlawful con-

duct of the carrier, is allowed to count for twice as much as present physical capacity in fixing the mine's rating. This permits the carrier to accentuate and prolong past wrongs in a greater degree than the rule of the Pennsylvania Railroad Company. A rule which leads to such results is not susceptible of defense either upon legal or moral grounds.

We would not be unmindful of the fact that the rules we are considering are as unjust to a newly opened mine as to one which has been the victim of discriminatory practices. This is clearly pointed out by Judge Pritchard in his able opinion in the *Pitcairn Coal case,* 165 Fed., 130:

> Under the present method of ascertaining the percentage of cars to which the shipper is entitled, those shippers who are just beginning to develop their property are placed at a great disadvantage, and owing to which it is well-nigh impossible for a shipper thus situated to secure a sufficient allotment of cars as to enable him to dispose of the product of his mine in such quantities to secure anything like a substantial development of his property. Therefore we are of opinion that such system of coal-mine rating is unfair and inequitable to new mines located along the line of this railroad company, where there are a number of old and established mines. To hold otherwise would be to give the Fairmount Coal Company and other favored companies an undue and unreasonable preference, which, as we have heretofore stated, is forbidden by the act, and we are therefore of opinion that the court below erred in ruling that this particular method was a fair and reasonable one. We think the true rule as to the basis for the distribution of cars is correctly stated by Judge Goff in the case of *United States ex rel. Kingwood Coal Co.* v. *W. Va. No. R. R. Co., supra,* and that, in determining the percentage of cars to which each mine is entitled, the railroad company should be guided solely by the physical capacity of the mine to furnish coal for shipment.

In view of the injustice of the car distribution practices of the defendant and other coal-carrying railroads there is only one course properly open to the carriers at the present time. The ideal basis for the rating of mines is of course present-day commercial capacity. The difficulty lies in attaining that ideal. Physical capacity may not be a perfect standard, but at least it more nearly approaches the ideal than a rule which rests in part upon commercial output during a period when unlawful discrimination was the order of the day. I believe that it would not be unfair to compel the carrier from this time forth to prorate their available equipment among the mines which they serve upon a physical capacity basis alone. This would enable all mines to start upon approximately even terms and would deny to mines which have been unduly favored in the past the right to retain the full measure of that unjust advantage. If, after having given the physical-capacity basis a fair trial for a year, it should appear that it does not fairly represent commercial needs, proper amendments could readily be made. Past commercial performance would not then be such an inequitable factor as it is to-day.

Commissioner CLEMENTS joins in this dissent.

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INTERSTATE COMMERCE COMMISSION

ASSIGNED CARS FOR BITUMINOUS COAL MINES

No. 12530

IN RE DISTRIBUTION AMONG COAL MINES OF PRIVATELY OWNED CARS AND CARS FOR RAILROAD FUEL

Submitted December 19, 1923. Decided December 23, 1924

1. Paragraph (12) of section 1 of the interstate commerce act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules.
2. Findings in former report, 80 I. C. C. 520, that the practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of the ratable share contemporaneously distributed to bituminous-coal mines upon their lines which do not receive assigned cars, found for the future to be unjust and unreasonable, and unjustly discriminatory against, and unduly prejudicial to mines not receiving assigned cars, and unduly and unreasonably preferential of mines which are furnished such cars in excess of the ratable proportion, and that cars specially placed by order of the commission under the provisions of paragraph (15) of section 1 of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires, affirmed.
3. Order entered in this proceeding June 13, 1923, the effective date of which has been postponed until January 15, 1925, permitted to become effective on March 1, 1925.

Henry Wolfe Biklé, *W. S. Bronson*, *Kenneth F. Burgess*, *H. T. Dick*, *O. W. Dynes*, *R. V. Fletcher*, *F. W. Gwathmey*, *Walter McFarland*, *W. A. Northcutt*, *C. C. Paulding*, *H. R. Preston*, *Theodore W. Reath*, *C. J. Rixey*, *C. M. Sheafe, jr.*, and *H. A. Taylor* for respondents, members of the American Railway Association; *J. H. Fishback* for Canadian National Railways; *Joseph H. Nuelle* for New York, Ontario & Western Railway Company; and *Eugene S. Williams* for Western Maryland Railway Company, respondents.

August G. Gutheim and *James W. Carmalt* for Berwind-White Coal Mining Company, Westmoreland Coal Company, New River & Pocahontas Consolidated Coal Company, Pennsylvania Coal & Coke Corporation, Pittsburgh Plate Glass Company, Public Service

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Electric Company, Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner Union Coke Corporation, Rainey-Wood Coke Company, and Island Creek Coal Company; *Hugh F. Smith*, *F. C. Slee*, and *Ralph J. Baker* for Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner-Union Coke Company, and Rainey-Wood Coke Company; *Wayne Johnson* for Pennsylvania Coal & Coke Corporation; *Richard Jones, jr.*, for Republic Iron & Steel Company; *L. A. Manchester* for Youngstown Sheet & Tube Company; *Paul D. Cravath*, *Hoyt A. Moore*, and *Frederick L. Ballard* for Bethlehem Steel Corporation and subsidiaries; *Richard V. Lindabury*, *Charles McVeagh*, and *Charles S. Belsterling* for Illinois Steel Company, Carnegie Steel Company, American Steel & Wire Company, National Tube Company, American Sheet & Tin Plate Company, United States Coal & Coke Company, United States Fuel Company, and H. C. Frick Coke Company; *Clifford H. Browder* for International Harvester Company and Wisconsin Steel Company; *Horace Andrews*, *W. P. Belden*, and *John B. Putnam* for Cleveland Cliffs Iron Company, Steel Company of Canada, Limited, Perry Iron Company, and Pickands, Mather & Company; *C. B. Longley* for Ford Motor Company; and *E. T. Butler* for Trumbull Steel Company and Trumbull Coal Company.

Russell B. Burnside and *Charles G. Blakeslee* for Public Service Commission of New York.

Shearman & Sterling, *Samuel E. Wolf*, *William C. Speer*, *James L. Quackenbush*, *M. S. Sloan*, *J. C. Edwards*, and *W. L. Pepperman* for various public utilities.

Butler, Lamb, Foster & Pope and *Ernest S. Ballard* for National Coal Association; *A. M. Liveright* for Central Pennsylvania Coal Producers' Association; *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *L. C. Boyle* and *George N. Brown* for Southern Ohio Coal Exchange; *C. D. Boyd* for Harlan County Coal Operators Association and Hazard Coal Operators Exchange; *E. L. Greever* and *Greever & Gillespie* for Pocahontas Operators Association and Operators Association of Williamson Field, W. Va.; *S. C. Higgins* for New River Coal Operators' Association; *A. R. Yarborough* for Kanawha Coal Operators' Association; *C. J. Neekamp* for Northeast Kentucky Coal Association; *E. J. McVann* for Northern West Virginia Coal Operators' Association; *W. L. Hammond* for White Star Coal Company and Detroit City Gas Company; and *Van A. Bittner* and *W. Jett Lauck* for International Union, United Mine Workers of America.

REPORT OF THE COMMISSION ON FURTHER HEARING

ATCHISON, *Commissioner:*

This case is before us on further hearing. On March 22, 1921, we instituted an investigation upon our own motion, with respect to the reasonableness and propriety of the present car distribution rules of the respondents, i. e., all the steam-railroad carriers subject to our jurisdiction, in so far as such rules apply to privately owned coal cars and cars furnished for railroad-fuel coal, with a view to prescribing such just or reasonable rules or regulations as might appear to be necessary.

On June 13, 1923, after extended hearings and argument, we issued our report, 80 I. C. C. 520, in this proceeding. The rule as proposed by respondents at the hearings provided in substance that assigned cars, namely, cars for railway fuel and private cars, must be placed at the coal mines to which assigned; that if the assigned cars thus placed at a mine should equal or exceed the mine's pro rata share of the available car supply for that day it should not be entitled to any unassigned cars; but that if the number of assigned cars placed at the mine should be less than its pro rata share for that day it should be given enough unassigned cars in addition to its assigned cars to make up its pro rata share. This rule and the classes of cars it covers are more particularly described in our report, pages 522 *et seq.* We there held that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act, and found:

that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory agninst and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which

they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

There appears to be no reason for the continuance of the investigation as to carriers serving solely anthracite coal mines, and the present investigation, as far as it in terms covers the distribution of cars at anthracite mines, will be discontinued.

By an order issued at the time of our report, June 13, 1923, we required the respondents, on or before September 1, 1923, to discontinue the regulation and practice found to be unreasonable and unjustly discriminatory in the report and thereafter to establish rules and practices in conformity with our finding. We thus required the carriers to abolish the assigned car rule.

Soon after our report was issued, and before the effective date of our order, petitions for rehearing were filed by the respondents and by a number of owners and users of private cars. The case was reopened upon the petitions filed herein, a hearing was held, briefs were filed, and the case was orally argued. It is now before us upon the voluminous record made in the original hearing and on the further hearing. Pending the disposition of this case we have from time to time postponed the effective date of our original order. On the further hearing, as in the original hearing, the evidence related to distribution of cars to bituminous mines as distinguished from anthracite mines and our present determination will be so limited.

We shall first deal with assigned cars for railway fuel, and then with assigned private cars.

ASSIGNED CARS FOR RAILWAY FUEL

In the original proceeding respondents contended that on any particular day a carrier should be permitted to assign cars to a mine for railway fuel in excess of the mine's pro rata share of cars even though on the following day the mine should ship commercial coal. The carriers now take the position, however, that without conceding the day-to-day assignment of cars to be unlawful, they can get along if permitted to assign cars to mines the entire output of which they take for a substantial period. They now contend only for a rule which will permit the unrestricted placement of cars under the assigned-car rule to such mines. Respondents in argument assume the period to be at least six months or a year.

The principal contentions of the carriers are (1) that we are without authority under the interstate commerce act to abolish the assigned-car rule as applied to cars placed at mines owned by a railroad and furnishing it their entire output for an extended period, six months or more, and to mines from which a carrier purchases the entire output for a like period, and (2) that if we have such authority, the record shows that the rule is reasonable and not unjustly discriminatory.

Situations of individual carriers summarized.—In their petitions for rehearing respondents asked that the case be reopened and evidence heard for the purpose of ascertaining whether the experience of the carriers shown in the table on page 536 of our original report as not using assigned cars, is such as to justify the abolition of the assigned-car rule. On further hearing witnesses representing eight of the 52 carriers listed in this table testified as to the individual situations on their respective lines. We summarize the showing as to the eight as follows:

The *Great Northern* has not found it necessary to follow the assigned-car practice in securing its coal. Our table is correct in showing that it was not assigning cars in 1920 and on October 1, 1922. For periods of a few days at times the carrier insists that its fuel coal be loaded by the mines in preference to commercial coal. About 53 per cent of the fuel which the Great Northern uses is obtained from the docks at the head of the lakes and is consumed on its lines east of Wolfe Point, Mont. Box cars are used to a considerable extent for this movement. The remainder of its fuel is obtained from Montana mines, the largest one of which it owns, and from a mine at Fernie, British Columbia. About 94 per cent of the coal produced west of Wolfe Point is used for company fuel. Part of this comes from small mines with which the carrier has made partial-output contracts to enable them to continue in operation. During the coal strikes of 1919 and 1922 some coal was received by the Great Northern from mines in Illinois. From September, 1922, to April, 1923, between 11,000 and 12,000 cars of coal were received from this source. About 11 per cent of this coal came in cars which this carrier delivered to the Chicago, Burlington & Quincy to be placed at a mine at Herrin, Ill., with which the Great Northern had a contract for the entire output. The witness produced by this company was not informed as to whether the cars which were thus delivered were placed in excess of the mine's distributive share.

The *Chicago & North Western* originates on its line from 200 to 400 cars of fuel per day for its own use, and from 20 to 200 cars of commercial coal. On an average 30 per cent is commercial and 70 per

cent fuel coal. The greater portion of the company's fuel comes from its own mine in McCoupin County in central Illinois. A part of its supply comes from mines which it owns near Buxton, Iowa, and from other mines located in that State and in Wyoming. This company does not follow the assigned-car practice in obtaining its coal. This was true in 1920 and in October, 1922, as shown in the table in our report.

The *St. Louis-San Francisco* has not followed the assigned-car practice in obtaining fuel coal from mines on its own line. In case of car shortage, the mines give the railroad preference in filling orders for coal. About 20 per cent of its fuel supply is obtained under partial-output contracts from mines off its line, located on short lines in Illinois near St. Louis, except a mine located on the Louisville & Nashville, the output of which is taken jointly by the St. Louis-San Francisco and the Missouri-Kansas-Texas. These two lines furnish a full car supply, if needed at the mine on the Louisville & Nashville, without reference to the existing car supply on that road. Cars are also furnished for loading at the other off-line mines, but the witness called by this carrier was not informed as to whether such cars were placed in excess of the mines' distributive share. The Seaboard Air Line furnishes cars for its coal at mines on the St. Louis-San Francisco. If these mines are given more than their percentage allotment, the excess is equalized as promptly as possible. Of the St. Louis-San Francisco's fuel requirements 25 per cent is cared for by oil. Except in times of anticipated mine suspension this company does not store coal.

The *Atchison, Topeka & Santa Fe* followed the assigned-car practice in 1920 and was following it on October 1, 1922, in the placement of stock and ballast cars at mines on its line. The company owns 6,000 hopper-bottom stock cars and 2,500 drop-bottom ballast cars. These, the witness for the company testified, are not acceptable to commercial coal loaders, but it is shown that they are loaded at mines which also ship commercial coal and can be dumped in the same manner as ordinary coal cars. They are used exclusively in times of car shortage for company fuel, and are counted against the mines under the assigned-car rule. At other times ordinary gondolas are used for this purpose. This company consumes about 140 cars of coal a day, 90 per cent of which is secured from mines on its own line, including its own mines. In times of car shortage about two-thirds of the fuel coal from mines on its line moves in the stock and ballast cars, the remainder in other cars distributed on a pro rata basis. Coal from off-line points is secured from a mine on the Burlington and from one on the Minneapolis & St. Louis. The latter furnishes about four cars a day in Atchison, Topeka & Santa

Fe cars. The witness was not informed as to whether these cars are placed at the mine in excess of the commercial ratable distribution. About 60 per cent of the company's total fuel requirements is met by the use of oil.

The *Carolina, Clinchfield & Ohio* is shown in our original report as assigning cars for its fuel purposes in 1920, and as not following this practice on October 1, 1922. However, the record on further hearing shows that in 1920 this company did not find it necessary to resort to the assigned-car practice. During the almost continuous car shortage that year, when the supply ran as low as 50 per cent for extended periods, the company was able to secure preferential loading of its coal at the mines with which it contracted. In other words, the mine operator deferred the filling of commercial orders until the railroad's fuel needs were met. Beginning in November, 1922, the carrier began to assign cars, as it was unable to get its contracts filled during the car shortage then existing, and because the coal company with which it contracted for fuel refused to fill its orders in preference to commercial customers. It assigned the cars to a mine the output of which was taken jointly by it and the Southern. It consumes coal at the rate of about 20 cars per day. It has on its line 25 mines, producing 350 cars of coal per day, which represents 65 per cent of the total tonnage handled. It owns sufficient cars to care ordinarily for the output of the mines on its line. These cars normally move to southeastern territory and come back regularly. During 1922, however, owing to the coal miners' strike, many of its cars were diverted from their usual channels and moved to western territory. This resulted in a considerable shortage. No coal is stored by this company.

The *Western Maryland* obtains its coal under yearly contracts from four or five mines having a total capacity of about 50 cars per day. These mines are located on its line or on lines over which it has trackage rights. They produce no commercial coal. This carrier follows the assigned-car practice when it considers this necessary. In October, 1922, it was not securing its fuel coal in assigned cars but did so in 1920. A car shortage developed the first week in November, 1922, and lasted until April, 1923. During this period assigned cars were used to cover the fuel needs of this carrier.

Subsequent to our former hearings in November, 1922, the *Seaboard Air Line* arranged with the St. Louis-San Francisco, Louisville & Nashville, and Birmingham Belt to assign cars for its fuel supply to mines on those roads in the Alabama field. Cars were furnished by the Seaboard under this arrangement. The witness produced by this carrier had no information as to whether the roads to which such cars were delivered placed the cars in excess of the

pro rata share of such mines, but stated that since the cars have been furnished by his road to mines on lines of these carriers, an adequate and dependable supply of the proper grade of coal has been secured.

The table in our report is correct in showing that the *Delaware, Lackawanna & Western* did follow the assigned-car practice in 1920 and was not following this practice on October 1, 1922. On the latter date it had a surplus of about 1,700 cars of bituminous coal on line, which, following the coal miners' strike, had been secured principally from England and in part from Nova Scotia and Virginia. This surplus was greatly reduced toward the latter part of 1922, and the carrier then resumed the assigned-car practice. It regarded this as the only practicable means of securing its coal during the car shortage then existing. This carrier's fuel supply of about 100 cars a day is secured from mines on foreign lines in Ohio and Pennsylvania. About 60 per cent of its supply is secured from output-contract mines on the assigned-car basis and 40 per cent from partial-output mines without assigned cars.

In our report, page 541, we pointed out that certain important carriers, including the Pennsylvania, New York Central, and Louisville & Nashville, had not presented any statement of the reasons which impelled them to adopt or maintain the assigned-car practice. In their petition for rehearing respondents referred to this statement, and asserted that if we considered the record deficient in this respect, their petition should be granted in order that information might be supplied as to the practice and experience of these railroads. On the further hearing the New York Central and its affiliated company, the Michigan Central, introduced evidence as to the individual situations on their lines. The Pennsylvania and the Louisville & Nashville offered no testimony, but announced that they would rely upon the evidence introduced by respondents in the original hearing. Certain other carriers not shown in the table in our report introduced evidence on further hearing. The individual situations shown will be briefly reviewed.

The *New York Central Railroad* consumes normally 8,000,000 tons of coal per year, 74 per cent of which is obtained under contracts which call for the total output of the mines for a year, and cover the carrier's minimum requirement of 450 cars per day. These mines are on the assigned-car basis. Among these mines are nine owned by the carrier through a subsidiary company, the Clearfield Coal Corporation. The company mines supply the carrier with about 120 cars of coal a day at a price 7 cents per ton less than that paid to other operators in the same district. Different kinds of coal are used on various divisions of the carrier, and the engines are drafted accordingly. The carrier claims that in time of sus-

tained car shortage it is necessary to use assigned cars to insure delivery of the proper quality of coal. During the winter the carrier's daily consumption of coal reaches a maximum of 600 cars, and the additional coal is purchased from partial-output mines and obtained without assigned cars. In October, 1923, this carrier had in storage 750,000 tons of coal or about 43.5 days' supply. It customarily carries from six to eight days' supply in cars, some of which is hauled 500 to 600 miles. The witness for this carrier stated that if not permitted to assign cars in case of a sustained car shortage, it would be necessary to increase the supply in cars to from 10 to 12 days, thereby tying up approximately 2,500 additional cars for fuel.

The *Michigan Central* secures about 24 cars per day of its fuel requirements of 140 cars from mines on its line in Michigan. It has two contracts for the total output of mines on foreign lines. Other contracts are made jointly with other subsidiary lines of the New York Central. Its fuel supply in Michigan, as well as at other mines from which it takes a partial output, are secured without the use of assigned cars. Before placing contracts, invitations to bid are sent to between 200 and 300 operators. Contracts are made for the coal year. Under the assigned-car rule, this carrier is able to secure coal from approved mines which guarantee a regular source of supply. From 1912 to 1917 it secured its entire supply without the use of assigned cars. The carrier contends that without assigned cars it would be unsafe to carry less than 10 days' supply under load, while with the assigned car about six days' supply is kept under load.

The *Erie Railroad* consumes approximately 3,800,000 tons of bituminous coal a year. Approximately 54 per cent is from mines on foreign railroads, and the remainder comes from mines on its own line. Among the latter are 10 mines operated by two companies, the stock of which is owned by the carrier. These 10 mines furnish approximately 40 per cent of the carrier's total fuel supply, and also ship small quantities commercially. Only a small percentage of the coal produced on the line is commercial coal. This carrier purchases its coal under contracts providing for delivery of a maximum and minimum tonnage, the minimum being 20 per cent less than the maximum. The carrier obligates itself to take the minimum, but may take the maximum. In securing its coal the carrier follows the assigned-car practice. A large amount of its coal originates on the Pittsburg & Shawmut and is obtained through brokers. The Erie delivers its cars to that carrier for use by the brokers who designate the mines at which the cars are to be placed on the assigned-car basis. At the time of the hearing in

October, 1923, this carrier had stored about 60 days' supply of coal on the ground.

The *Hocking Valley* consumes normally about 25 cars of coal a day, which it secures from three of the 150 to 200 bituminous mines which it serves. One of the three mines furnishes its entire output to the carrier, the other two only part of their output. In making contracts for the output of mines the period provided is not less than six months. The assigned-car practice is followed as to output mines, but not as to partial-output mines. The carrier owns 350 side-dump cars, which are classed by it as work cars, and used exclusively in securing its fuel coal. These cars, with others of the same kind, were formerly used in commercial service. The others, however, were converted in 1918 into solid-bottom cars to make them more suitable for commercial use. The carrier's coaling stations have been constructed for the use of side-dump cars, and are not suitable for the use of cars of other types. The 350 side-dump work cars are used at both the total-output mines and the partial-output mines. However, they are not placed in excess of the distributive share of the partial-output mines. From 60 to 70 cars of locomotive fuel are ordinarily carried at the fuel stations each day. About 50,000 tons of coal were stored on the ground between February and July of 1923. Some of this coal had to be removed because of spontaneous combustion.

The *Chicago, Rock Island & Pacific system* consumes about 3,500,000 tons of coal per year. About 40 per cent of this coal is secured from 15 of the 72 mines on its line. The remaining 60 per cent is secured from mines in Illinois on the Chicago & Alton, the Chicago, Illinois & Midland, and the Louisville & Nashville; from mines in Colorado on the Colorado & Southern and Denver & Rio Grande, and from mines in New Mexico on the El Paso & Southwestern. This coal is used as nearly as possible to point of production. The carrier sends cars under special assignment to the mines on foreign lines, except to those in Colorado and New Mexico, where 50 per cent of the car requirements are furnished. This, however, is under an agreement between the railroads, and includes cars for commercial loading as well as cars for railroad fuel. The carrier follows the assigned-car practice as to mines on its own line, including four or five mines it owns in Oklahoma, which supply about 5 per cent of its fuel coal. They also engage in commercial business. This is true of other mines on its line furnishing it with coal. The witness produced by this company was not informed as to whether cars were placed for its fuel loading at mines on foreign lines in excess of their pro rata share of cars.

In our former report, at page 541, we described briefly the practices of the *Chicago, Burlington & Quincy* with respect to its fuel supply. The capacity of the mine which it owns in southern Illinois has since been increased from between 4,200 and 4,500 tons to between 5,500 and 6,000 tons per day, and is expected ultimately to reach a capacity of 7,000 tons per day. From January to July, 1923, the lowest price which the carrier paid for coal from mines other than its own mine was $2.96 per ton in May, and the highest was $3.19 per ton in January. The prices thus paid were approximately 40 cents per ton higher than the cost of coal from its own mine. This mine is owned through a subsidiary company. The authorities of Illinois authorized such ownership as in the public interest provided that the price paid by the carrier for the coal purchased from the coal company should not exceed the cost of production plus interest charges and depreciation and provided that no coal should be supplied to the general commercial trade. The company assigns cars only to its own mine and to a mine whose output is taken by another carrier in cars furnished by the latter. About 7,000 of the 13,500 tons which the Chicago, Burlington & Quincy consumes daily is procured without assigned cars from mines the partial output of which it takes. During slack periods, or when requirements are less, its own mine is closed down because the contract mines meet its requirements. This carrier stores coal, but has found it impracticable to store fine coal. On October 1, 1923, 648,685 tons of coal were in storage at 20 different points. On lines east of the Missouri River, the carrier operates 121 self-firing locomotives which burn fine coal. This kind of coal is most satisfactory from the standpoint of price and helps commercial mines to dispose of a grade for which there is frequently no market. In a number of instances the carrier obtained coal from mines other than its own to improve conditions and realize more freight revenue.

In our original report, page 537, we stated that the *Chicago Great Western* owned a mine on the Illinois Central and had provided itself with hopper-bottom cars which were assigned to the mine to take care of its fuel needs. The controlling interest in this mine was acquired in 1917. The Madison Coal Corporation, a subsidiary of the Illinois Central, operates the mine and furnishes the entire output to the Chicago Great Western for fuel. About 80 per cent of the carrier's daily consumption of 2,300 tons is obtained in the hopper-bottom cars from this mine on the assigned-car basis. The carrier has 21 modern mechanical coaling stations on its line, for which these cars are especially adapted and at which they can be

unloaded at a cost about 14 cents per ton less than the cost of unloading from miscellaneous equipment.

The practices of the *Chesapeake & Ohio* were explained in our report at page 540. Since the original hearing it has reduced the number of cars daily under load with fuel from 1,200 to 700, or approximately 1,300 loaded and empty cars out of an ownership of 40,000 coal cars. This was accomplished by discontinuing the practice of concentrating fuel coal at division points, from which it was rehandled. It now moves direct to the consuming point. The locomotives of the carrier are designed to use nut and slack coal largely. This represents approximately one-third of a mine's output, lump and egg representing the remainder. The witness produced by this carrier expressed the opinion that preferential contracts calling for nut and slack are not practicable, since lump and egg coal must be produced and shipped at the same time; and that it would not be practicable to supply the kind of coal in the type of car suited for unloading at the various coaling stations if pro rata distribution should be required. During the first six months of 1923, when a car shortage existed, 25,148 cars were supplied for company fuel. The witness testified that if these cars had been distributed with other cars on a pro rata basis the car supply at commercial mines would have been increased 2.2 per cent. From July to September the increase, it was testified, would have been 1 per cent. This carrier will not receive assigned cars from a foreign line unless they are delivered in cuts of 15 cars or more and are for placement at a mine or mines having output contracts with the foreign line for a period of not less than six months. On October 1, 1922, the Atlantic Coast Line, the Richmond, Fredericksburg & Potomac, and the Detroit & Mackinac had contracts for fuel supply with mines on this carrier's rails but cars were not assigned to any of these mines until the latter part of the year, because of the condition of the motive power of the Chesapeake & Ohio. Since that time cars have been assigned for the Atlantic Coast Line and the Detroit & Mackinac, but not for the Richmond, Fredericksburg & Potomac because that carrier has been unable to meet the requirements of the Chesapeake & Ohio.

The *Canadian National*, which includes the Grand Trunk, referred to at page 540 of our report, obtains from 35 to 40 per cent of the 8,500,000 tons of coal it consumes per year from mines in the United States. About 20 per cent of the entire supply is from two mines which it owns in Ohio, one on the Pennsylvania and the other on the Baltimore & Ohio. Both are on the assigned-car basis. The cars are furnished by the Canadian National. These mines were selected because of the quality of coal produced. The carrier ob-

tains approximately 1,000,000 tons of fuel coal per annum in this country, without assigned cars, from various mines from which it purchases part of the output. The assigned-car practice is not followed in securing coal in Canada. The carrier attempts to keep from 60 to 100 days' supply of coal on hand with a larger supply at the lake ports in order to provide for the entire winter. At the time of the last hearing it had from 90 to 100 days' supply at all points.

The Associated Industries of Massachusetts, with a membership of about 1,557 manufacturing industries, appeared in support of the assigned-car rule, and urged that it be left in effect to enable the New England carriers to secure a regular and dependable supply of coal.

On the further hearing, the assigned-car rule was opposed by the International Union, United Mine Workers of America, and by various coal operators' associations, including the National Coal Association, the Central Pennsylvania Coal Producers' Association, Southern Ohio Coal Exchange, Pocahontas Operators' Association, and the Illinois Coal Traffic Bureau. Generally speaking, the opponents of the rule contend that the evidence introduced on further hearing is merely cumulative and that no showing has been made which would warrant us in reversing our decision in the original case.

Evidence was introduced by some of the opponents of the assigned-car rule to show the discriminatory effect of this rule, the resulting diminution in the percentage allotment at nonassigned-car mines, and the practicability of securing railway fuel of proper quality at reasonable prices without assigning cars under the rule. The National Coal Association introduced in evidence, among other things, a table showing new equipment acquired, condition of old equipment, and railroad-fuel coal stored by railroads of this country, following an efficiency program which was adopted by railroad executives on April 5, 1923, to enable the carriers better to meet the transportation demands of the country. This table showed railway coal stored on November 1, 1921, to be 11,701,736 tons, on October 1, 1922, 5,423,195 tons, and on October 1, 1923, 17,663,448 tons. This association also introduced evidence showing tonnage of coal moved by representative noncoal-loading carriers, coal cars owned by each, and percentage of cars owned on line, by months, for the years 1920, 1921, and 1922, the percentage being substantially more than 100 per cent during the car-shortage periods of 1920 and the last half of 1922. The witness for the International Union, United Mine Workers, testified as to the irregularity in working time of miners in various sections of the country during the year 1921, and asserted that, although that was a year of full car supply, the irregu-

larity in working time resulted largely from overdevelopment of the mining industry caused by the assigned car in the past. In addition to testifying as to the adverse effect of the assigned-car rule upon labor, this witness also testified that the use of the assigned car enables the railroad to obtain cheaper fuel at the expense of the public, because with short-car supply at other mines the cost of production is increased, and this increased cost is passed on to the public.

Contention as to our authority.—Our authority over the distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize us to prescribe just and reasonable rules. The provisions of these sections clearly indicate the broad scope of the authority which Congress has conferred upon us, and the important duties with which we are charged, to require, in time of car shortage, a just and equal distribution of cars and the prevention of a distribution which is unjust and discriminatory. *United States* v. *New River Co.*, 265 U. S. 533.

Respondents, however, contend that paragraph (12) of section 1 shows that we have no jurisdiction over the distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier and coal is not "transported" therefrom. The first sentence of this paragraph is relied upon to support this contention. This sentence reads:

> It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for *transportation* of coal among the coal mines *served* by it, whether located upon its line or lines or customarily dependent upon it for car supply.

The word "served" has no judicially determined or technical meaning which would make it inapplicable to carrier-owned or output-contract mines. We must, therefore, give this word its ordinary meaning. The Standard Dictionary defines it, among other things, to mean "to furnish or provide as with a regular supply at stated periods." "Self-service" is a common expression. To use this word, therefore, to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes, is to give the word its ordinary and well-accepted meaning. This is the meaning which we believe the Congress intended. As used in paragraph (12) "served" is a convenient term to show that the provisions of this paragraph apply not only to mines which are located on a carrier's own line, regardless of the ownership or contractual arrangements of

such mines, but also to mines which are located off its line and which it customarily supplies with cars.

Respondents also contend that the word "transportation" in paragraph (12) means common-carrier transportation, transportation for compensation, and not transportation of a carrier's own coal over its own line for its own consumption. They cite as authority *Int. Com. Comm.* v. *Balt. & Ohio R. R.*, 225 U. S. 326; *Santa Fe Ry.* v. *Grant Bros.*, 228 U. S. 177; and *The Pipe Line Cases*, 234 U. S. 548.

That "transportation" has not the restricted meaning claimed appears from the use of this word in the second sentence of paragraph (12), which reads:

> • • • During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for *transportation* of coal against the mine. • • •

The counting requirements clearly apply to cars placed by a carrier for its coal at mines on the same date shipping commercial coal, yet this coal is transported by the carrier without compensation. The word "transportaton," therefore, as used in paragraph (12) is not limited in its meaning to transportation for compensation, but includes also transportation of the carrier's own coal over its line.

In *Interstate Commerce Commission* v. *Ill. Cent. R. R.*, 215 U. S. 452, 472, the Supreme Court sustained the rule which we laid down in the *Traer case*, 13 I. C. C. 451, that cars for railway fuel should be counted at the mines at which they are placed. The contention[1] there, as stated by the Supreme Court, was:

> When coal is received from the tipple of a coal mine into coal cars by a railway company, and the coal is intended for its own use and is transported by it, it is said there is no consignor, no consignee and no freight to be paid, and therefore, although there may be transportation, there is no shipment, and hence no commerce.

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[1] The lower court sustained this contention and in doing so said in *C. & A.* v. *I. C. C.*, 173 Fed. 930, 932.

"Coal is brought by complainants from mines along their roads under contracts whereby the coal is delivered to them at the mine tipples. Some is there loaded directly into the tenders of the locomotives. The remainder is taken in cars to the railroads' coal chutes. All is for the complainants' own consumption.

"Commerce in these instances ends at the tipples. From there on, whether the coal goes directly or indirectly to the tenders, there is no consignor, no consignee, no shipper, no common carrier, no freight, no vehicle transporting a commodity in commerce. These cars are withdrawn from complainants' available commercial equipment, just as are flat cars while being used to distribute gravel for ballast. It is erroneous, therefore, to require complainants, in distributing their available commercial equipment among their shipping patrons, to take account of cars that are being used in hauling their own fuel."

The Supreme Court in overruling this contention said, at page 474:

> It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

Thus the court held that we had jurisdiction over cars used for hauling railway fuel over a carrier's own line, on the theory that such cars were instrumentalities of interstate commerce and could be regulated with a view to bringing about a just and equal distribution and preventing an unjust and discriminatory one. Whether the cars were used in common-carrier transportation was immaterial. The cases relied upon by respondents, namely, the *B. & O. Case*, the *Grant Bros. case* and *The Pipe Line cases*, *supra*, relate to what is common carriage and are, therefore, not in point. As to foreign-line fuel cars we call attention to the following in our original report, p. 546:

> When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. *Rates on Railroad Fuel and Other Coal*, 36 I. C. C. 1, 9, *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C. 265.

See also *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 326.

In view of the conclusion which we have reached as to the meaning of the words "served" and "transportation" in paragraph (12), we are of the opinion that its provisions apply to cars placed at carrier-owned and output-contract mines and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules. On oral argument counsel for respondents expressed the opinion that we could restrict the assigned-car practice to mines furnishing their output to a carrier for periods of at least six months. They thus apparently admit that mines selling their output to railroads for shorter periods are "served" and the coal hauled in the assigned cars is "transported" within the meaning of the act.

Respondents contend that an assigned-car mine furnishing all of its coal to a railroad for a long period of time is not in competition during such period with unassigned-car mines selling coal to others, and that in the absence of competition we have no authority to make a finding of undue prejudice or unjust discrimination under sec-

tion 3 of the act. The period which respondents assume, as we previously pointed out, is at least six months. If the period be less, apparently they recognize that competition may exist.

In the *Illinois Central case*, our authority under section 3 was in issue, and the court sustained our finding of unjust discrimination. Cars were required to be counted although the coal in them belonged to the carrier and was transported by it without compensation for its own use. While respondents attempt to distinguish that case on the ground that, as they contend, only partial-output mines furnishing railway fuel were there dealt with, the principle there established is broad enough to cover this case.

Assigned-car mines which furnish their output for long periods of time to railroads are, at the end of such periods, because of lower costs and better labor conditions which they have enjoyed, in a position to undersell competing unassigned-car mines. The record also shows that railroad-owned mines in many instances sell coal commercially. Such mines may not only at any time dispose of part or all of their product commercially, but may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, while we do not consider this circumstance essential to our decision in this case, the record clearly shows that there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. We think upon the facts shown of record that we have jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act. Competition is not an essential element under section 1. *Penn Tobacco Co.* v. *Old Dominion S. S. Co.*, 18 I. C. C. 197, 200.

Respondents contend that the evidence fails to show that the assigned-car rule is unreasonable under section 1 of the act; that a finding, if any, abolishing the assigned-car practice must rest on section 3; that the *Traer case* decision was made under that section; and that there has been no showing in this proceeding that justifies us in abolishing the rule laid down in that case.

In making this contention respondents, we believe, overlook the broad provisions of section 1 as to reasonable rules. Moreover, they fail to realize that to abolish the assigned-car rule is not to depart from the principle laid down in the *Traer case*, but to carry out that principle by preventing altogether the discriminatory practice which was there only partially restricted. We showed in our report, page 553, that "The circumstances surrounding and subsequent to our decisions in the *Traer case* and *Hocking Valley case* are such that the practice based upon the rules there announced can scarcely be

given the sanctity of long observance in considering the question of reasonableness or undue preference."

Effect of assigned-car rule.—In passing upon the rule before us, it is important to bear in mind the fundamental purpose of the act "to compel the carrier as a public agent to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." *New Haven R. R.* v. *Interstate Com. Com.*, 200 U. S. 361; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *United States* v. *Union Stock Yard*, 226 U. S. 286. We have already noted the Supreme Court's language in the *Illinois Central case* as to our power to require "a just and equal distribution and the prevention of an unjust and discriminatory one." The court also refers in that case to the carrier's "duty to make equal distribution of cars," page 477, and "the duty of equality of treatment," page 473. In *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, 88, which related to assigned foreign railway fuel cars and private cars, we said:

> There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are disposed to and do actually favor some shippers at the expense of others. * * * The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rates but an impartial enjoyment of the facilities and services of interstate carriers.

One effect of the assigned-car rule, as we pointed out in our original report, pages 542 to 546, is to diminish the supply of cars at commercial mines. The extent of the diminution in car supply, as we also pointed out, is in dispute and is difficult to state in mathematical terms. Counsel representing the American Railway Association contend that, while on the whole it seems difficult, if not impossible, to name an exact figure which will represent the per centage of increase in the supply of cars to commercial mines which would be brought about by the abolition of the assigned-car privilege, 3 per cent would be more nearly a correct figure than any other which could be named. Opponents of the assigned-car rule on further hearing introduced further evidence on this phase of the case. This showed, among other things, that, if there had been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania, which include that portion of the railroad from Cresline, Ohio, east to New York, the supply of commercial mines

for the eight months ended April 30, 1923, would have been increased from 34.23 per cent to 54.02 per cent of the commercial cars ordered, or an increase of 57.81 per cent over the supply received by commercial mines during that period. From September 1 to March 1 during this period, the total number of cars available, assigned and unassigned, decreased from 165,016 the first month to 94,280 the last month, and the percentage of assigned cars available to all cars available increased from 25 to 65 per cent. The orders for commercial cars remained almost constant. The following table shows the situation as to car supply on the Cresson and South Fork divisions of this railroad from October 19, 1922, to April 30, 1923:

	Total required	Cars available		Percentage of cars available to cars required
		Assigned	Unassigned	
Cresson division:	*Cars*	*Cars*	*Cars*	*Per cent*
Railroad-fuel cars	10,141.2	8,930.0	295.4	91
Private cars	21,257.8	24,447.9	1,092.8	126.1
Commercial cars	141,780.4	[1] 3,602.8	38,589.2	29.8
Total	173,179.4	36,980.7	39,977.4	44.4
South Fork district:				
Railroad-fuel cars	15,119.1	11,955.5	510.2	82.5
Private cars	30,297.6	36,023.0	242.4	119.7
Commercial cars	87,117.9	[1] 3,286.9	23,778.7	31.1
Total	132,534.6	51,265.4	24,531.3	57.2

[1] Includes cars not assigned for railroad fuel but for other reasons not counted against the distributive share of the mines.

It will be observed that if there had been a pro rata distribution of all cars, assigned and unassigned, the commercial supply on the Cresson division would have been increased from 29.8 per cent to 44.4 per cent, or an increase of 49 per cent, and on the South Fork district from 31.1 per cent to 57.2 per cent, or an increase of 83.9 per cent.

The supply of assigned and unassigned cars in the various districts of the Chesapeake & Ohio during the first three months of 1923 is shown in the following table:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percentage	Ordered	Furnished	Percentage
New River	94,366.9	27,471.8	29.1	5,989.5	5,494.7	91.7
Kanawha	67,619.4	20,282.3	30.0	3,394.6	3,068.6	90.4
Coal River	37,840.1	11,041.7	29.2	2,911.6	2,212.6	76.0
Logan	117,965.2	37,823.1	32.1	16,345.5	14,546.0	89.0
Kentucky	47,381.6	14,067.1	29.7	6,603.0	5,596.5	84.8
Total	365,173.2	110,686.0	30.3	35,244.2	30,918.4	87.7

District	Total			Percentage increase[1]
	Ordered	Furnished	Percentage	
New River	100,356.4	32,966.5	32.8	12.7
Kanawha	71,014.0	23,350.9	32.8	9.7
Coal River	40,751.7	13,254.3	32.5	11.3
Logan	134,310.7	52,369.1	39.0	21.5
Kentucky	53,984.6	19,663.6	36.4	22.6
Total	400,417.4	141,604.4	35.4	16.8

[1] Last column shows percentage increase in commercial supply if all cars are distributed pro rata.

The evidence does not show the various classes of assigned cars, except that as to the Logan district it shows the 16,345.5 assigned cars ordered included 9,954.4 cars for Chesapeake & Ohio fuel coal and the 14,546 assigned cars furnished included 9,286.4 cars for Chesapeake & Ohio fuel coal.

The supply of cars, assigned and unassigned, in the Corning, Drakes, Fultonham, and Kanawha & Michigan districts on the Ohio Central lines of the New York Central Railroad for the first three months of 1923, is shown as follows:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percentage	Ordered	Furnished	Percentage
Kanawha & Michigan	65,635	17,019	25.9	6,029	3,436	57
Drakes	10,513	2,775	26.4	257	140	54.5
Corning	28,172	8,479	30.1	10,620	7,709	72.6
Fultonham	5,715	1,660	29.1	4,633	3,907	84.4
Total	110,035	29,933	27.2	21,542	15,192	70.5

District	Total			Percentage increase[1]
	Ordered	Furnished	Percentage	
Kanawha & Michigan	71,664	20,455	28.5	10
Drakes	10,770	2,915	27.1	3
Corning	38,792	16,188	41.7	38.5
Fultonham	10,348	5,567	53.8	85
Total	131,577	45,125	34.3	26

[1] The figures in the last column show the percentage increase in car supply which commercial mines would have received if there had been a pro rata distribution of all cars.

After weighing the evidence in the light of the various contentions made on this phase of the case, we think our former conclusion that the supply of cars at commercial mines would be increased by abolishing the assigned-car rule is fully warranted. This effect not only clearly appears from the evidence, but also the gross inequality of treatment as between assigned-car mines on the one hand and un-

assigned-car mines on the other. As we pointed out in our original report, page 550, the result of inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production, and the amount of such increased cost is considerable and important. We think it unnecessary to add to what we said in our original report, page 550, as to the effect of the assigned-car practice, in attracting as many desirable miners as can be given employment to the assigned-car mine and away from commercial mines, and in bringing about a more rapid labor turnover at the latter than at the former.

In our original report, page 547, we pointed out that the record indicated that upon the whole the wastage during periods of car shortage, which results from the holding over from one day to the next of cars set for loading, is somewhat greater at mines which use the railroad or private assigned car than at commercial mines. We see nothing in the evidence on further hearing to change our finding on this point.

Contentions as to necessity of assigned fuel cars.—Respondents contend that the assigned-car rule as advocated by them is reasonable and not unjustly discriminatory because under it they are able to secure a regular supply of coal of proper quality at reasonable prices during car-shortage periods while without it they would not be able to do so. Before reviewing the large volume of evidence on this feature of the case it is important to bear in mind that the fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because the carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore the remainder. In *United States* v. *Ill. Cent. R. R. Co.*, 263 U. S. 515, the court said, page 523:

> The effort of a carrier to obtain more business, and to retain that which it had secured, proceeds from the motive of self-interest which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carrier's motives in granting them are honest. *Interstate Commerce Commission* v. *Chicago Great Western Ry.*, 209 U. S. 108, 122. Self-interest of the carrier may not override the requirement of equality in rates. * * *

That was a rate case, but the principle is applicable in a car-distribution case, that a carrier's self-interest may not override the requirement of equality in car distribution. See also *Int. Com. Comm.* v. *Balt. & Ohio. R. R.*, 225 U. S. 326.

Much of the argument as to economy of operation resolves itself into the proposition that a carrier is able to secure cheaper coal as

the result of discriminating in its own favor through the use of the assigned car. As to this it is appropriate to repeat what we said in our report of January 25, 1907, to Congress on "Discriminations and Monopolies in Coal and Oil":

> * * * The prevailing rule is that cars in which fuel coal was loaded were not counted against the percentage of cars allotted to the operator furnishing such coal, but that fuel coal cars were arbitrarily allotted to the operators furnishing such coal over and above their percentage allotment.
>
> The reason advanced by the officers of the railroad for this was that it enabled them to get cheaper fuel, in that an operator loading fuel coal would get the cars necessary to carry the same over and above the percentage he was entitled to under the system of car distribution in effect, and that he would therefore be willing to make a low price on fuel coal in order to keep his colliery running regularly. The result of this was practically a payment by the operator to the railroad company for cars by way of reducing the price of fuel cars, and while the profit of the operator on fuel coal may not be large, it enabled him to keep his miners regularly employed and his plant in operation and gave him an advantage over a competitor who has no order for fuel coal.

While, as we pointed out in our original report, there was lack of evidence to show that railroads had used the assigned-car rule to coerce mine operators into selling their coal at unreasonably low prices, the evidence introduced at the original hearing and upon the further hearing shows that the carriers are able in consideration of furnishing a full supply of cars under this rule to make contracts for coal at somewhat lower prices than they could otherwise make.

Respondents contend that the table in our report of 52 carriers not using assigned cars does not, when considered in view of the evidence which they presented, justify the inference that carriers can secure their coal at reasonable prices during periods of car shortage without the use of the assigned car. However, as to the eight carriers, whose practices were shown on the further hearing, the evidence shows certain significant facts. The Great Northern and Chicago & North Western did not resort to the assigned-car practice in securing their fuel. The St. Louis-San Francisco in securing approximately 73 per cent of its coal from mines on its own line did not follow this practice, and followed it only to a limited extent, if at all, in securing the remainder of its coal from mines on other lines. The Atchison, Topeka & Santa Fe secured over one-third of its supply of coal without the use of assigned cars. The Carolina, Clinchfield & Ohio did not follow this practice in 1920 or in October, 1922, although it did do so the latter part of that year. During 1920 and until the latter part of 1922 the Seaboard Air Line obtained practically all of its coal without assigned cars. The Delaware, Lackawanna & Western obtained 40 per cent of its coal in this manner. Our table shows that the Atlantic Coast Line and

the Detroit & Mackinac did not follow the assigned-car practice in 1920 and were not following the practice on October 1, 1922, and that the Richmond, Fredericksburg & Potomac, while following the practice in 1920, was not using assigned cars on October 1, 1922. This showing remains uncontradicted, except that in the latter part of 1922 the first two carriers secured coal on the Chesapeake & Ohio in cars placed under the assigned-car rule, while the third carrier continued to secure its coal on that road without assigned cars. As to the remainder of the 52 carriers listed in our table as not using assigned cars, the showing made therein is neither contradicted nor modified. Among these are certain important roads like the Union Pacific, the Buffalo, Rochester & Pittsburgh, and the Mobile & Ohio.

The evidence on further hearing as to carriers other than those shown in our table furnishes in many instances added support for the conclusion that carriers in car-shortage periods may secure their coal at reasonable prices without the use of the assigned car. As illustrative of this, the Chicago, Burlington & Quincy, between the time of the original hearing and the further hearing in this case, secured over half of its coal without the use of assigned cars, during a period of sustained car shortage. This was true also in previous car-shortage periods, as shown at the original hearing. The New York Central secured about 26 per cent of the coal it consumed without the use of the assigned car. The Pittsburgh & Lake Erie, a part of this system and an important coal-loading carrier, did not follow the assigned-car practice in securing its fuel in the year 1920. The Michigan Central, also a part of the system, secured, since the period of Federal control, a substantial portion of its fuel in Michigan without the use of assigned cars, and from 1912 to 1917 procured all of its coal without assigned cars.

Many large and important carriers in representative sections of the country have secured their coal during periods of car shortage without resorting to the use of assigned cars, and many others have secured large portions of their fuel supply in the same manner. The evidence in the original record and upon the further hearing also shows that public utilities and quasi public utilities have been able to secure their coal without the use of the assigned cars. We pointed this out in our report, pages 552 and 553.

There is a large volume of evidence in the original record and in the record upon the further hearing as to the methods which carriers adopted, and which they could adopt in securing their fuel without the assigned-car rule. These include greater storage of coal during periods of inactive demand and a wider distribution of fuel contracts among producing mines, with a provision in some cases that railroad coal shall be delivered in preference to coal for other customers.

While the carriers contend that these methods are impracticable as substitutes for the assigned-car rule, the experience of carriers and other public utilities and quasi public utilities, which do not depend upon this rule in securing all or a large part of their fuel, and the other evidence in the record on this subject, convince us of the practicability of securing railway fuel at reasonable prices in the absence of the assigned-car rule.

As stated in our original opinion, however, emergencies may arise when for a time a carrier may be unable to secure its coal. But we are not here dealing with the question of car distribution under the emergency provisions of section 1, paragraph (15). In our original report we expressly pointed out that the rule which we prescribed was not to preclude us from authorizing necessary assignment of cars in case of emergency. The question of a just and nondiscriminatory rule under the provisions of section 1 and section 3, with which we are now dealing, is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in paragraph (15), where it is provided that we may suspend car-service rules at such times.

In the petition for rehearing filed by the American Railway Association it was alleged that the abolition of the assigned-car rule would add more than $100,000,000 a year to the operating expenses of the carriers, which must ultimately be met by the public. No figures were offered to show how this sum was computed, and there was a general failure of evidence to support this contention. As we have previously indicated, carriers which have not used the assigned-car rule in securing all of their coal, or a large part thereof, have been able to do so at fair prices. Moreover, as the result of inequality in working time caused by the assigned-car rule the costs of commercial mines are increased and the public in consequence must pay higher prices for coal. We referred to this in our original report, pages 550 and 551. It seems probable that, as one of the consequences of abolishing the rule, carriers will increase the storage of coal during periods of free car supply and thus not only secure coal at low prices but make more equipment available for revenue service during periods of car shortage. The evidence shows that many carriers, as well as public utilities and important industries, store large quantities of coal and are able to do so at reasonable expense. Storage by railroads and others in periods of car surplus tends to equalize the demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal.

It has been suggested in this proceeding that elimination of the assigned-car rule would be an unwarranted interference by us with the carriers' right to purchase coal where and from whom they please. A similar contention was overruled in the *Illinois Central case*, 215 U. S. 452, 477, in which the court said:

> The right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things.

Special types of equipment.—On further hearing, the contention is made that the side-dump cars of the Hocking Valley and the ballast and stock cars of the Atchison, Topeka & Santa Fe are special types of equipment which are used exclusively by these carriers in hauling their coal and can not be used by commercial operators at all, and that we are without authority to deal with such cars for the reason that—

> Cars of this type have never been impressed with the character of common-carrier instrumentalities. They are not used in commerce at all; they are used only in performing the private work of a railroad company.

The Hocking Valley cars were in commercial service for many years before they were put in fuel-coal service, and they are placed at partial-output mines selling commercial coal and are counted and distributed on a pro rata basis. The Atchison, Topeka & Santa Fe cars are placed at mines of this description and are counted under the assigned-car rule, and such cars may be unloaded by dumping like ordinary coal cars. The side-dump cars and the stock and ballast cars constitute part of the available equipment of these carriers for commercial shipments, and come within the class of equipment as to which Congress requires "a just and equal distribution and the prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474.

It is contended that if the assigned-car rule should be abolished carriers will be deprived of the advantage of using a particular type of cars especially adapted for unloading at coaling stations. Our order, however, does not prohibit such use, but merely placement in excess of the mine's distributive share. The Hocking Valley as we have just pointed out, now uses its side-dump cars in securing coal from partial-output mines on a pro rata basis of distribution.

Railroad-owned mines.—In what we have said we have dealt with railroad-owned mines as well as other mines. We shall here refer briefly to railroad-owned mines alone.

A statement filed by respondents shows 23 railroads owning mines. The ownership in nearly all cases is through subsidiary companies.

Eleven[2] of the 23 had mines producing commercial coal as well as fuel coal. Four, the Chicago Great Western, the Chicago, Rock Island & Pacific, the Richmond, Fredericksburg & Potomac, and the Delaware, Lackawanna & Western had mines located on other railroads. Five, the Chicago & North Western, the Great Northern, the Minneapolis & St. Louis, the Richmond, Fredericksburg & Potomac, and the Union Pacific are carriers which do not resort to the assigned-car practice. The Canadian National should be added to the four having mines on other lines.

Certain of the carriers owning mines emphasize the importance of having these mines from the standpoint of economy and efficiency. The Chicago, Burlington & Quincy closes down its mine during periods of car surplus, and distributes its purchases among commercial mines to help such mines and thus produce more revenue freight. Moreover, the evidence indicates that in some instances at least, coal can be secured more cheaply from commercial mines than company-owned mines because of the greater distance necessary to haul the coal in the latter case. The Atchison, Topeka & Santa Fe does not consume the output of one of the mines which it owns, because to consume it all would require hauling the coal unreasonable distances. The Chesapeake & Ohio mines are on a branch line. If all the coal this company consumes should be taken from these mines, it would have to be hauled into and through other coal-loading districts on the same railroad.

PRIVATE ASSIGNED CARS

Much of what we have said concerning assigned cars for railway fuel is applicable to private cars.

Nearly all of the private-car owners who filed petitions for rehearing appeared in the original proceeding or had subsidiary or affiliated companies which did. They stated that the evidence which was introduced there did not fully disclose the necessity for the private assigned car in the various classes of industries relying upon it and cont nded that they should therefore be permitted to make a complete showing on this subject.

On the further hearing much evidence was introduced by such owners as to their individual situations and the economic necessity in each case of the assigned private car. The widest scope was allowed in the production of testimony as to these individual situations

[2]Atchison, Topeka & Santa Fe, Baltimore & Ohio, Central of Georgia, Chicago, Rock Island & Pacific, Erie, Great Northern, Minneapolis & St. Louis, Missouri Pacific Northern Pacific, Southern Pacific, and Union Pacific.

and needs. The names of the companies introducing evidence and the number of cars owned are as follows:

Bethlehem Steel Corporation	3,975	Seaboard By-Product Coke Company	350
Steel Company of Canada and affiliated companies	400	Chicago By-Product Coke Company	650
Carnegie Steel Company and other subsidiaries of United States Steel Corporation	5,200	Rainey-Wood Coke Company	400
Pittsburgh Plate Glass Company	269	Donner Union Coke Corporation	500
Ford Motor Company and subsidiary company	800	Berwind-White Coal Mining Company and subsidiary company	4,078
Youngstown Sheet & Tube Company	1,334	Westmoreland Coal Company	2,019
International Harvester Company and subsidiary	500	Public Service Electric Company	600

These companies owned about 21,000 of the total 29,296 coal and coke cars privately owned as of October 1, 1923.

In addition to the evidence offered by private-car owners, certain public utilities of the city of New York, which received large quantities of coal in private cars owned by others, introduced evidence to show the necessity of the private assigned car. With the exception of the National Coal Association, the same associations which opposed the railway-fuel car opposed the private assigned car and in addition to these there were, among others, the Harlan Coal Operators' Association and the New River Coal Operators' Association.

Contention as to our authority.—Some of the private-car owners content that the interstate commerce act recognizes private cars as legitimate, that the right of the owners to use such cars includes the right to have them placed at designated mines without restriction unless such use of cars result in preferential use of other equipment such as locomotives or tracks, and that we have no authority to abolish the assigned-car rule and require pro rata distribution, because, as they contend, the facts do not warrant us in finding that the use of such cars will result in preferential use of facilities other than cars.

In our original report, pages 554 to 559, we referred to various decisions in respect to private cars, and said:

> Throughout our reports we have held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout we have recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation.

A statement of the general principles which should be applied is also to be found in *United States* v. *Baltimore & Ohio Railroad Co.*, 165 Fed. 113.[3] In that case the Circuit Court of Appeals for the Fourth Circuit in dealing with the distribution of privately owned cars to coal mines called attention to the provisions of section 1 requiring carriers to furnish transportation upon reasonable request and to the definition of "transportation" in section 1 as including cars and other vehicles "irrespective of ownership or of any contract express or implied for the use thereof," and then proceeded as follows, pages 122 and 123:

In passing upon the questions involved, it should be borne in mind that the statute casts upon the carrier the plain duty of furnishing a fair and equal distribution of facilities to the shipper. The duty thus enjoined cannot be evaded by the carrier by claiming that it is not the owner of the portion of the cars carried over its lines. The duty of furnishing equal facilities relates to and involves purely the question of transportation, and when we are called upon to determine as to whether in any particular instance there has been an undue and unreasonable discrimination or preference as contemplated by the statute, the sole question is as to whether the entire equipment operated over the lines of the carrier has been fairly and equally distributed among all the shippers along its lines who are similarly situated. The defendant mine owners insist that in the purchase of individual cars they have expended a considerable sum of money, which thereby becomes a part of their investment and should be treated as such, and that it would be unfair to them to require the carrier to charge such cars as a part of the percentage to which they are entitled. This is a matter which we cannot consider, inasmuch as the statute was not enacted for the purpose of promoting the interests of any particular mine owner; it being limited to one purpose, to wit, the fair and equal distribution of car service by railroads or transportation companies among all mine owners similarly situated within the territory in which their lines are operated.

It is made the duty of the carrier to move the product of the shipper, and in doing so, if the carrier should by any means deny to a particular shipper his just and proportionate share of facilities as compared with other shippers similarly situated, then, in that event, the shipper would undoubtedly be entitled to the relief accorded by section 23 of the act. If, as in this instance, a carrier, by contractual arrangement, operates individual cars belonging to mine owners as a part of its equipment, such arrangement cannot in the slightest degree relieve the carrier of the duty to furnish equal facilities to all shippers similarly situated. To adopt any other rule would be to make it possible for wealthy mine owners, by the purchase of car equipment, to utilize the means of transportation operated by the carrier to such an extent as to practically deprive other mine owners similarly situated of any means of transportation, and it was to avoid this very kind of discrimination that the provisions of sections 1 and 3 of the interstate commerce act were enacted. There is nothing in the interstate commerce act which prohibits a carrier from making any arrangement it may choose as respects the ownership of cars which it operates on its lines. That is a matter which it left entirely with the car-

[3] The case was later reversed by the Supreme Court in *Baltimore & Ohio R. Co.* v. Pitcairn, 215 U. S. 481, but on the ground alone that the lower court had no jurisdiction to pass upon the reasonableness of car-distribution rules, since the question was an administrative one for the commission.

rier; but, while such is the case, it is equally true that the carrier cannot, by any such arrangement, by indirection, accomplish that which is prohibited by the statute.

The private-car owners concede that the assigned-car rule established by the *Hocking Valley case* and *Traer case* is reasonable and lawful. In one of the briefs in behalf of many of such owners, it is stated that this rule "has the approval of the Supreme Court of the United States. *Int. Com. Comm.* v. *I. C. R. R. Co.*, 215 U. S. 452." While the court in that case did not expressly pass upon the rule in so far as private cars were concerned, it may be considered as authority for the proposition that we have power to make such a rule. The lower court in *Chicago & Alton R. Co.* v. *Int. Com. Comm.* 173 Fed. 930, in sustaining the rule as to private cars said, page 932:

> A charter duty of railroads is to provide cars, as well as tracks and locomotives. So far as the shipping public is concerned, it is a matter of indifference whether railroads discharge this duty by purchasing or by renting or by borrowing cars. But since no vehicle for transporting commodities in commerce can have any rights upon the tracks of a public carrier except under and by virtue of the carrier's charter, a shipper who is not also a lessor or lender of cars is interested in seeing that the carrier abstains from discriminations in conditions of service on account of the ultimate ownership of any of the instrumentalities used by it in the transportation of commodities in commerce. A shipper who owns cars is not entitled on that account, or on any account, to a preference in rates or in promptness of service. If his cars are used, all that he is entitled to is to be paid the just value of the use, whether measured by mileage or otherwise. If he has a contract with the carrier that calls for more, that contract is pro tanto void. In our judgment, therefore, the so-called private cars, if accepted by an interstate carrier for use by it in transporting a commodity in commerce, must be treated as constituting a part of the carrier's available commercial equipment.

The fundamental principle which has governed us in dealing with private cars is that such cars, being paid for by the carriers through allowances to their owners, are to be treated as part of the carrier's equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Prior to the *Hocking Valley* and *Traer* decisions private cars were not taken into account at the mines to which they were assigned. Such mines received in addition their full pro rata share of system cars in the same manner and to the same extent as if the private cars were nonexistent. By these decisions, however, private-car owners who did not have sufficient private cars for placement at their mines to exceed the distributive share of such mines were deprived of the advantage of ownership of the cars just as private-car owners claim here that they would be deprived of the advantage from the ownership of their cars if the assigned-car rule should be abolished and the placement in excess of the distributive share of the mines be prohibited. The interstate

commerce act not only confers authority upon us to restrict the preferential use of private cars as was done in those decisions, but authorizes us to prohibit altogether such preferential use. *United States* v. *New River Company*, *supra*, and cases therein cited. As we pointed out in our original report, page 561:

> A private-car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable.

The contention is made that paragraph (12) of section 1, which was incorporated into the interstate commerce act by transportation act, 1920, limits our power to change or extend by further limitation the rule laid down in the *Traer case* and *Hocking Valley case*. That this was not the intent of Congress, we think, is clear. In this connection, it is to be observed that the Supreme Court in *United States* v. *Pennsylvania R. R. Co.*, decided November 17, 1924, used the following language:

> * * * There is nothing in the Act to Regulate Commerce as originally enacted, or in Transportation Act, 1920, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by the use of facilities possessed, or to narrow the Commission's powers to prevent unjust discrimination. * * *.

Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within the broad powers conferred upon us by the statute to prevent unjust discrimination.

As to the contention of private-car owners that they are entitled to unrestricted use of their cars unless this involves some preferential use of facilities other than cars, we may repeat here what we said in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92:

> The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to have his private car attached to a locomotive in preference to a system car loaded by another shipper. The ownership of a private coal car or the possession of a foreign railway fuel car can give to an operator no preferred right to have it occupy a carrier's sidings or other tracks as against a system car loaded by another coal operator, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines. And this shortage in other facilities which, as heretofore stated, rarely, if ever, fails to accompany a shortage in cars, has an important bearing upon the matter of the distribution of cars, and underlies what the Commission has said on those questions in its formal decisions.

In the report of the American Railway Association conference committee to the United States Coal Commission, dated June 1, 1923, which is in the record, the following appears:

"Coal Car Shortage," while a term generally used, is commonly a misnomer; "Transportation Shortage" would be more exact or more properly descriptive. From the viewpoint of the mine management a "car shortage" exists when cars are not placed on mine tracks in sufficient quantity to fill car orders. From the viewpoint of the railroad management the situation may rather be considered a "Transportation Shortage," for at such a time there may exist no "car shortage" on the railroad as a whole. That is, even though all car orders are not filled there may be in the road's possession as many coal cars in the aggregate as in previous periods when the mines it served loaded a greater amount of coal and the needs of such mines for cars were more adequately or fully met.

When labor disturbances cause abnormal demands for coal to be delivered in certain sections of the country within a certain period, the coal moves to meet these demands via routes and gateways in quantities far above the normal, or average, movement through such channels and also via unusual routes. Because of this abnormal coal movement, yard tracks, main tracks, terminals, lake and tidewater piers and various other facilities become overtaxed or congested, with a consequent slower movement and longer turnaround of cars. This results in what the mine management terms a "car shortage."

As we pointed out in the *Rail and River case*, "A shortage in cars usually if not invariably is accompanied by a shortage in some one or more of the other facilities of the carrier." Locomotives, tracks, employees, terminal facilities, etc., are so related to the number of cars in service that an excessive demand for cars places an excessive burden upon such other facilities. Some of the more aggravated cases of discrimination shown under the assigned-car rule were during car shortages resulting in part at least from lack of motive power and limited track facilities. Some of these cases were cited by private-car owners as examples of the necessity of the assigned car. As illustrative of this, the United States Steel Corporation, International Harvester Company, Chicago By-Product Company, and Ford Motor Company, through subsidiary companies, operate large mines in the Harlan district of the Louisville & Nashville in Kentucky, and severally own about 4,000 private cars used in serving their respective mines. The evidence shows that this carrier was unable, because of limited track facilities among other things, to handle all the cars required by the mines in this district, and yet private-car mines received practically full car supply while other mines in the district received less than a 30 per cent supply for substantial periods. Other divisions of the same railroad not only had a larger percentage of cars than the Harlan

district, but at times during the car shortage it was shown that this carrier notified connections not to deliver empty cars to it.

In determining upon a just and workable rule, we must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with the fundamental requirements of the act.

Contention as to necessity of private assigned cars.—As we have indicated, much evidence was introduced by private-car owners to establish the necessity of the use of private cars under the assigned-car rule. Much emphasis was laid upon the technical processes involved in the making of by-product coke and the necessity of having a regular supply of coal of proper quality for coking purposes. The principal witness on this subject was the president of the Seaboard By-Product Coke Company and the Chicago By-Product Coke Company. The situation as to the former is typical and will be briefly summarized:

The Seaboard By-Product Coke Company operates 165 by-product coke ovens at its plant in Kearney, N. J., in which it uses about a million tons of coal a year in producing about 750,000 tons of coke. In this process gas and other by-products of the coal are recovered. The gas is supplied to a public-service gas company. Of the coke 60 per cent is sold to public utilities for the manufacture of water gas and the remainder is sold to industrial and domestic customers. The by-product company is under contract to furnish daily a fixed amount of gas to the gas company, which under its franchise must supply gas to the public. Continuous operation of the by-product plant is necessary in order to supply the gas contracted for and to furnish a regular supply of coke to gas companies for the manufacture of water gas. By-product ovens are lined with specially molded silica brick, and require a gradual heating of from six to eight weeks to put them in blast. Rapid heating will expand the oven walls, destroy them, and require rebuilding at substantially replacement cost and with long delay. Sudden shutdowns will likewise wreck the ovens. The witness estimated the cost of replacement to be from $300,000 to $500,000, depending upon the size of the plant. It is important to have a continuous supply of uniform grades of freshly mined coal from selected mines in order to comply with specifications as to gas and to produce coke suitable for water gas manufacture and for the metallurgical and domestic

trade. Unknown and varying coals will cause serious injury to the ovens by reason of expansion or crumbling during the coking process. Determination of correct mixtures of coal is a delicate operation, requiring much time and many tests in test batteries of ovens. The company ordinarily keeps in storage about two months supply of coal to guard against a breakdown in transportation or trouble at the mines. Such coal must be mixed with freshly mined coal to produce satisfactory results.

In 1919 and 1920 the Seaboard By-Product Company was unable, because of car shortages then existing, to secure suitable coal under contracts which it had. Additional coal was purchased to keep its plant in operation, but this was of poor quality and resulted in bad coke. In 1920 the company acquired 350 cars, and has been able to have these cars assigned and has thus secured suitable coal and operated its plant satisfactorily during car-shortage periods.

In the last 10 years over $200,000,000 has been invested in by-product coke plants and their accessories, and a tremendous saving in natural resources has resulted from the use of this process. The by-products thus saved are estimated to be worth about $4 for each ton of coal coked.

The steel companies also emphasized the necessity of private assigned cars in securing coal of proper quality for the by-product coke plants which they operate in connection with the manufacture of steel. Large quantities of gas are supplied by such companies to public utilities. It is important in producing steel to have coke made from coal of proper physical structure and metallurgical content. Sulphur and phosphorus in the coal used for coking will continue throughout the process and impair the quality of the finished steel. Many of these companies own outright or through their subsidiary companies mines selected because of the suitability of the coal produced for steel making and use their private cars for transportation of the coal from their mines to their own plants. Some of such mines ship only to the industries which own them. When coal can be obtained and stored the steel companies generally carry a sufficient supply in stock to take care of their requirements during any ordinary period of irregular coal supply or interrupted transportation service.

The Berwind-White Coal Mining Company and its subsidiary, the New River & Pocohontas Consolidated Coal Company, own 4,078 private cars which are used in transporting coal from mines which the former company owns on the Pennsylvania and from mines which the latter company owns on the Chesapeake & Ohio. The subsidiary company also owns mines located on the Norfolk

& Western. These companies supply large quantities of coal to railroads and public utilities and to steamship companies for bunker coal. They have owned the cars for many years, and contend that such cars under the assigned-car rule are a necessity in order to insure regular delivery to their customers.

Evidence of similar character was introduced by other private-car owners. While all of them contend that private assigned cars are necessary in their industries and in some cases allege that disaster will result if they are deprived of the assigned-car privilege, the record shows that many of such owners secure large quantities of coal without the assigned car. As illustrative of this, the Carnegie Steel Corporation and other subsidiaries of the United States Steel Corporation normally receive by rail 20,000,000 tons of coal annually, one-half of which is used in their mills for producing gas and steam and one-half in their by-product coke ovens. These companies own 5,200 coal cars. Of the 20,000,000 tons 5,000,000 are moved in these cars. About 12.5 per cent of the 10,000,000 tons of coal for gas and steam and about 37.5 per cent of the 10,000,000 tons used for by-product coke are moved in this manner. Another illustration is to be found in the Pittsburgh Plate Glass Company, which owns about 269 cars and uses them in securing coal for its plants in the Pittsburgh district, but obtains coal in system cars for its other plants in Indiana, Ohio, and Missouri. The Youngstown Sheet & Tube Company obtains 49 per cent of its coal in system cars. This includes both high-volatile and low-volatile coking coal. The New York Edison Company and the Consolidated Gas Company of New York each receives about two-thirds of its coal in system cars. Large quantities of coal are secured by private-car owners from mines on the Norfolk & Western, which does not handle private coal cars during car-shortage periods or at any other time. The evidence presented showed that many public utilities, including street railways, obtained their coal without private cars. It further shows that many mines in the districts where private cars are used produced coal for by-product coke, bunker coal, and other kinds of coal in competition with that moved in private cars.

It is to be observed that many of the private-car owners appearing in this case did not purchase cars until the abnormal period following the termination of Federal control of railroads. The following companies, for example, first acquired their cars in 1920: Steel Company of Canada and affiliated companies, International Harvester Company and its subsidiary company, Bethlehem Steel Company, Youngstown Sheet & Tube Company, and Seaboard By-Product Coke Company. The Pennsylvania Coal & Coke Company acquired

its 1,000 cars between the time of the original hearing in this case and the future hearing. The president of this company at the original hearing opposed the use of private cars. 1,004 cars of the Ford Motor Company and its subsidiaries were also acquired subsequent to our original hearing in this case.

Many of the private-car owners deal with the contention of opponents of the private car that mines supplied with private cars have better working time than unassigned-car mines, by saying in a brief which they filed:

> Only in a car shortage period, however, can the ownership of private cars be a matter of moment, for at all other times all mines are supplied in full of all car requirements. While it is a fact that since 1916 coal car shortages have been common, that is not the normal situation. Once we are out of our war and *post* war difficulties, the opposite condition, one of coal car surplus, may be more regularly contemplated.

This statement is justified by the record.

The fundamental problem is to determine whether differences in transportation conditions justify the inequality of treatment resulting from the assigned-car rule. The evidence which has been presented as to the economic necessity of individual shippers or classes of shippers does not, we think, warrant us in concluding that this inequality of treatment is justified under the provisions of section 1 and 3 of the act. Compare *Rates and Charges on Grain and Grain Products*, 91 I. C. C. 105. In case of emergency we may grant relief under the provisions of paragraph (15), section 1. What is reasonable action under that section, however, as we pointed out in our discussion of fuel cars, is a different question from the one presented here.

Extent of discrimination.—We have already dealt generally with the discriminatory effect of the assigned-car rule as applied to both fuel cars and private cars. Opponents of this rule introduced evidence to show the adverse effect of the rule in respect to private cars, particularly on the Louisville & Nashville, the Chesapeake & Ohio, and the Pennsylvania. It was shown that during car-shortage periods private-car mines received practically a full car supply, while other mines on the same division of the same railroad received a comparatively small percentage of the cars ordered. Private-car owners themselves, in introducing evidence as to the necessity of the assigned-car privilege, showed in many instances the discriminatory effect of the rule. During car-shortage periods mines at which their cars were placed were able because of better car supply under the assigned-car rule to operate more regularly, at less expense, and with more efficient labor organization than such mines were able to operate with system cars only and than other

mines similarly situated on the same railroads and depending entirely upon system cars were able to operate. As illustrative of this, the Fordson Coal Company, a subsidiary of the Ford Motor Company, had a car supply of approximately 22 per cent at its mine on the Louisville & Nashville for the six months' period prior to the first placement of its private cars at its mine in February, 1923, and was able to produce only about 34,000 tons of coal a month, while in March with practically a full supply of private cars it was able to produce about 72,000 tons, although the car shortage continued. The costs per ton were reduced from about $4 in November, 1922, and $3 in January, 1923, to $1.93 per ton in March, 1923, and labor at the mine was better satisfied. During the period when the Fordson Coal Company was dependent upon system cars other private-car owners in the same district received practically a full supply of private cars at their mines.

Further evidence of the advantage which private-car owners received from the preferential placement of their cars under the assigned-car rule is to be found in the fact that they are willing to lose many hundred thousands of dollars in the operation of their cars in return for the advantage of such preferential placement during car-shortage periods. The railroads pay to private-car owners an allowance of 1.5 cents per mile for use of their cars. This, it was testified, was hardly sufficient to pay the cost of repairs alone. The Westmoreland Coal Company showed, for example, that for the two years and nine months ending September 30, 1923, the revenues received for the use of its 2,019 cars were $784,424, expenses for repairs amounted to $820,755, total expenses including interest and depreciation amounted to $1,329,488, and the net loss to the company was $545,064, or a loss per ton of coal handled in private cars of 18 cents in 1921, 13 cents in 1922, and 8 cents in the first nine months of 1923. Private-car owners, it is to be observed, use their cars throughout the year, both in periods of car shortage and in periods of full car supply.

As to the contention that the use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines, "this overlooks the fact," as we pointed out in our original report, "that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply." Furthermore, if private cars should be withdrawn from carrier service and the remaining supply of cars should be

inadequate, we have power under the act, as we also pointed out in our report, to require the carriers to furnish an adequate supply.

Contention as to impairment of investment.—Some of the private-car owners contend that they have invested many millions of dollars in reliance upon the rule laid down in the *Hocking Valley case* and *Traer case*, and that if we should now prohibit placement of such cars in excess of the pro rata allotment of the mines to which they are assigned or consigned, we would take away the only advantage of such cars and in practical effect wipe out the investment which has been made.

In our original report we did not find that the use of private coal cars should be prohibited or that they should not be placed at the mine to which they were consigned. What we did prohibit was the placement of such cars at a mine in excess of the pro rata share of available cars. Private-car owners were left free to continue to use their cars and to have them so distributed to designated mines as not to exceed the pro rata share of such mines. That large sums may have been invested in reliance upon a rule which is unreasonable and unjustly discriminatory or may become or be found so under the interstate commerce act does not mean that we are powerless to change the rule and prescribe a just and nonpreferential one. *Douglas* v. *C., R. I. & P. Ry. Co.*, 21 I. C. C. 97, 101; *So. Pac. Co.* v. *I. C. C.*, 219 U. S. 433; and *Louisville & Nashville Ry. Co.* v. *Mottley*, 219 U. S. 467.

If we permit the assigned-car rule to continue, it is reasonable to expect that the number of private cars will increase, and, as we said in our original report, page 559:

> The result is not only an increasing gross inequality between users of this form of equipment who are able to afford the very considerable expense in procuring and maintaining such equipment, reflected immediately in the disproportion between the amount of their output or consumption as the case may be, but also that the available facilities of the railroad carrier other than cars—locomotives, tracks and terminals—are taken up in great degree by such classes of preferred users, so that the commercial mines are and will find themselves unable to procure transportation for even the ratable share of the cars which the carrier owns and sets for them.

Upon the facts shown of record we affirm the findings in our former report, 80 I. C. C. 520, and find and conclude that in the distribution of cars for transportation of coal among the bituminous-coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, or whether owned or leased by or furnishing their entire output to a respondent, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel pur-

poses are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading, currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall prevent the assigning of privately owned cars or cars for railway fuel to designated mines, provided such mines are not thereby given more than their pro rata share of available cars. It is also not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

The effective date of our order entered in this proceeding June 13, 1923, has been postponed until January 15, 1925. The statutory period of notice is not less than 30 days. We will enter an order making that order effective on March 1, 1925.

EASTMAN, *Commissioner*, concurring:

I concur in the majority report, except so far as it sustains the conclusion of the original report with respect to the interpretation of paragraph (12) of section 1 of the act. My views with respect to that paragraph were stated in my former separate expression, 80 I. C. C. 520, 563, and to these views I adhere. COMMISSIONER CAMPBELL joints me in this expression.

HALL, *Chairman*, dissenting:

The considerations which prompted my dissenting expression appended to the former report, 80 I. C. C. 520, at 564, are fortified and confirmed by the additional record now before us. I can not escape the conviction that the majority have gone outside of transportation conditions, and thus outside of the proper scope of our powers, to make their findings of unreasonableness and undue prejudice. To my mind these findings are baseless, without warrant in fact or law, and I can not refrain from saying so when, under guise of a decision by this commission, they become armor, shield, and sword for a grave menace to the common welfare. Those who have experience in such matters well know that no workable substitute has yet been devised for the assigned car in supplying carriers with necessary fuel during periods of car shortage, and that if and when those periods come our priority orders must require what is here condemned by the majority as unlawful.

The private car, as my brother Daniels observed in his dissent from the former report, is not an outlaw. It has its uses at all times, and not merely in times of emergency. Under proper regulation, such as we have devised or can devise, it should continue to perform its important functions. The power to tax may be the power to destroy, but that is not true of the power to regulate.

POTTER, *Commissioner*, dissenting:

I am unable to agree with the majority report on further hearing. I set forth my views at some length in my former dissent, and would not find it necessary now to elaborate were it not for the additional facts developed upon the further hearing, which to my mind demonstrate the unsoundness of the majority view.

There are two aspects of this proceeding which were brought into brighter light upon further hearing. One is the propriety and necessity for assigning cars at railway-owned mines or at total-output contract mines located upon the line of the owning or contracting carrier where such contract extends over a considerable period of time. It has been made to appear that to so assign cars is squarely within the intent of Congress in enacting paragraph 12 of section 1 of the interstate commerce act, and in accordance with the view of the commission which recommended the enactment of that section because such assignments were essential and for the express purpose of sanctioning them. The other aspect is presented by the additional testimony as to the importance of the use of the private car as essential to certain lines of industrial development, and particularly to the by-product coking industry and the ramifications thereof. In my original expression I alluded to the effect of the

majority report, if not set aside by the courts, upon the steel industry and certain others. The additional testimony upon further hearing demonstrates that the majority report, if given effect, will attack in a most disastrous way a vast and growing industry based upon the by-product coking process, which is perhaps the most glorious achievement of this country along scientific lines.

ASSIGNED CARS FOR RAILWAY FUEL

Many of the ills with respect to the assigned car for railway fuel arose from the day-to-day assignment, or, stated differently, at mines from which the carriers secure only a part of their fuel requirements. In the original report the majority set forth the rules which the carriers at that time advocated. These rules followed a literal compliance with the rules prescribed by the commission in the *Hocking Valley case* and *Truer case*, with the added proviso that cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission would be designated as "assigned cars." Under a literal interpretation of our decisions in those cases it would seem that the day-to-day assignment was permissible. In them we stated that where a carrier owned the mine, or contracted to take its entire output, the cars need not be counted. We did not specify the period of time for which such total output was to be taken. Many of the carriers, in apparent compliance with these decisions, took the output of certain mines on a day-to-day basis, and furnished such mines on such days during car-shortage periods cars in excess of the pro rata share to which those mines would have been entitled if shipping wholly commercial coal. The next day or days such mines would again be placed on the commercial basis, but the excess cars placed at the mine on the day on which the railroad took the entire output were not taken into account, that is, there was no equalization effected on the subsequent days when cars were placed for commercial loading. The result was, that such a mine undoubtedly secured a preferential car supply on such days on which it supplied its entire output to the carrier.

The record indicates that some of the operating officials of the carriers did not comprehend what was embraced in the term "assigned car." This was emphasized by an exhibit filed subsequent to the hearing, which is a compilation of replies made by certain of the respondents to an inquiry addressed to them by the car-service division of the American Railway Association. These replies in some instances contradict the oral testimony given by witnesses for the same carriers. This misunderstanding, and the abuses of the rules which followed therefrom, makes it certain that some uniform

rule should be adopted. This is now recognized by the respondents. Upon the further hearing they did not insist upon the right to assign cars at partial-output mines, but insisted upon the right to assign cars at railroad-owned mines, or at those from which they take the entire output over a substantial period of time, thus eliminating those mines entirely as effective competitors of mines shipping coal commercially.

In the original majority report the history of paragraph (12), section 1, of the interstate commerce act is set forth in some detail. From what is there stated it seems clear that what the Congress intended was not to prohibit the assignment of cars at railroad-owned mines or at total-output mines, but that it clearly recognized, as this commission has in numerous decisions, that the carriers were at liberty to place cars at such mines without regard to the distributive share to which those mines would be entitled if shipping coal commercially.

The language of paragraph 12, it seems to me, is clear on this point. It provides that it shall be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. The first question to be determined is whether railroad-owned mines or total-output contract mines are served by the carrier, and therefore whether there is any duty upon the carrier to make just and reasonable distribution of cars for transportation of coal amongst such mines. A railroad sells transportation. That is its function. It does not sell transportation to mines which it owns, or to those from which it has contracted to take the entire output over a long period of time. Webster's Dictionary defines the word "serve" to mean "to work for, to labor in behalf of, to be in the employment of, etc." The first sentence in paragraph 12 relates to carriers which *serve coal mines*. It seems clear that when a carrier places at its own mine, on its own line, or at a mine on its line from which it purchases the entire output, such coal to be used as company fuel, the railroad does not *serve* the mine. On the other hand, the mine serves the carrier. The seller serves the buyer. The mine sells its services and product, and serves the carrier for compensation. The merchant serves his customers. The gasoline station serves the automobile owner when it places gasoline in the automobile tank. When a railroad sells transportation to a coal producer it serves the latter, but when a coal mine sells coal to a railroad its position is reversed, and the coal mine then serves the railroad. The fact that the railroad supplies some of the instrumen-

talities for removing its own coal from the mine does not change the relation. If a retail coal dealer sells coal to a householder the relation of buyer and seller is not changed by reason of the fact that the buyer brings his own conveyance and takes the coal home. The difference is merely in the extent of the service rendered by the seller. It seems to follow that when a railroad contracts with a mine to supply it with coal over a substantial period of time, or when the railroad owns the mine which supplies it with fuel coal, the coal mine becomes the servant of the railroad for hire, and the railroad by placing cars, which for the time being are company-service cars, at the mine for loading coal, is serving itself just as much as when it places cars at a coal-stock pile to be loaded by its regular employees.

In both instances the loaders are serving the carrier; in the one case the employee sells his service, in the other he sells his service plus his product. It should be noted here that freight service supplied by a railroad is made up, not only of human labor; it includes coal, oil, or some other fuel which is converted into and supplied in the form of energy so that even when a railroad serves a coal shipper by transporting its product it also supplies coal as well as human labor. The foregoing only applies to owned or long-term contract mines located upon the line of the owning or contracting carrier's line. The needs of the foreign carrier with respect to its fuel supply are, if anything, more urgent than those of the carrier which has coal mines located upon its line. Any rule, therefore, which is adopted with respect to the assignment of system cars should likewise apply to the assignment of foreign railway fuel cars.

The opinion of the majority relies upon the decision of the Supreme Court of the United States in *Interstate Commerce Commission* v. *Ill. Cent. R. R. Co.*, 215 U. S. 438, as sustaining the position that we have authority to regulate the supply of cars at railway-owned mines or at total-output contract mines even where that contract extends over a long period of time, and they quote at some length from the decision of the court to sustain that view. The question before the court in that case, however, was whether we were correct in our finding that fuel cars, both system and foreign, *at partial-output mines*, and private cars, should be counted in the distribution of available cars. The question of assigning cars at railroad-owned mines or at total-output mines was not before the court. That decision seems to hold that under section 1 we have the power to control the facilities of the carrier, even though used for its own private purpose, where necessary, to avoid undue preference and prejudice under section 3. It is conceded in this record that the only prejudice or discrimination as between a railroad-

owned mine or a total-output mine and the mine which ships its coal commercially is in the labor market, or, as stated by one of the counsel at the argument, competition in the upkeep of the mine or ability to purchase coal as advantageously as the assigned-car mine produces it, whether it be classified as labor, supplies, or overhead.

In the prior report the majority found that there were more than enough miners to produce coal for all purposes, and that there were more mines than is consistent with the most efficient use of equipment, and that their aggregate capacity exceeded the country's demand.

The mining of coal does not constitute interstate commerce, neither is the hauling of coal or other company material for its own use common carriage by railroad within the purview of the act.

The question of mine labor necessarily takes into account differences in circumstances arising before the service of the carrier begins, and I am unable to follow the majority that we can take those facts into consideration in determining whether undue preference or undue prejudice exists under section 3. We have the undoubted right, under the interstate commerce act, to control the facilities of the carriers so as to avoid unjust discrimination or undue prejudice as between shippers or receivers of property. We can not, however, regulate the coal industry except as it is incidentally affected by a proper regulation of car supply as a matter of transportation. The railroad-owned mine or the total-output contract mine are operated continuously the greater part of the time whether there is a car surplus or a car shortage. Other mines operate only when they have orders for coal, and in many instances only in periods of peak demand and high prices. It is only natural, therefore, that mines operating practically full time can command the better class of mine labor. It seems to me that if, during periods of car shortage, we were to undertake to regulate the car supply so as to result in equal working time for all mines, we would be going far afield in the regulation of transportation with which we have to deal.

The finding of the majority, as I interpret it, predicates the finding of unreasonableness, unjust discrimination, and undue prejudice chiefly on the ground of the effect which the unequal distribution of cars has on mine labor.

In a series of decisions under Docket 12066, *Construction and Repair of Railway Equipment*, we considered the practice of the carriers in using outside shops in repair and construction work, and found that they made unreasonable and uneconomical expenditures. We censured the carriers for exercising their best judgment in having repairs made at a time when such repairs were necessary at outside

shops instead of resorting to their own shops. The majority opinion in this case, it seems to me, is just the reverse of what the commission found in the case cited. Take the Chesapeake & Ohio as an example. It owns three mines, and employees in those mines are on the Chesapeake & Ohio pay roll, the same as any employees which operate the railroad. We, in effect, are saying to the Chesapeake & Ohio, that "although you can mine your coal cheaper in your own mines than you can secure it from elsewhere during periods of car shortage, nevertheless, you must not place cars at your own mines in excess of the pro rata share, and you must secure your other coal elsewhere at whatever price it is necessary for you to pay therefor."

On page 719 the majority report refers to certain further evidence introduced by opponents of the assigned-car rule on further hearing. The summation of the evidence referred to, which was in the nature of an exhibit filed, shows that had there been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania Railroad the supply to commercial mines for the eight months ended April 30, 1923, would have increased from 34.23 per cent to 54.02 per cent of the commercial cars ordered, or an increase of 57.81 per cent over the supply received by the commercial mines during that period. I think this is an erroneous conclusion to draw from the evidence. The exhibit in question shows, for example, that there were available for the month of September, 1922, more than 17,000 assigned cars in excess of requirements.

It is well known that we were in the throes of a coal strike from the first of April until well along in August, and that the large majority of mines in the central region of the Pennsylvania Railroad were union mines, and therefore closed down during the period of the strike. Many of those mines are owned by private-car interests, and many of the assigned cars available were doubtless private cars being held at the mines of the owners for the resumption of mining operations.

The central region of the Pennsylvania also supplies a large quantity of railway fuel not only for the Pennsylvania Railroad but for other carriers. If the assigned cars had been prohibited at that time, as the majority report now would prohibit them, the private cars, as well as many of the fuel cars, would not have been in that particular region at that time. To say, therefore, that the percentage of cars at commercial mines would have been increased to the extent indicated, is fallacious. The private cars could not be placed by the carrier at mines other than as directed by the owner of such cars. If those cars were eliminated and the railway-fuel cars prorated in the district or division in which they were on the particular dates covered by the exhibit, it may well be that the carrier would

then have been guilty of unjust discrimination in the supply of cars as between divisions or districts, which it would have been necessary for it to have equalized later.

PRIVATE CARS

Prior to our decision in the *Hocking Valley case* the carriers generally followed the practice of not counting private cars in the distribution of cars to coal mines. The mines were given all the private cars, assigned or consigned to them, and in addition their pro rata share of the available carrier equipment. In the *Hocking Valley case* we held that the private cars should be counted and considered in the distribution of equipment; that the owners or receivers of such private cars should be given full and exclusive use of them, but should not be given a division of the system cars except when the supply of the so-called private cars was less than their pro rata share of the total available cars, including system cars, foreign railway-fuel cars and so-called private cars.

In *United States* v. *Baltimore & Ohio R. R. Co.*, 154 Fed. 108, the Circuit Court of the United States for the District of Maryland had before it practically the same issue as before us in the *Hocking Valley case*. In that case a petition for mandamus was filed to require the Baltimore & Ohio Railroad to cease from subjecting the relator and other coal companies on the Monongah division to undue and unreasonable discrimination in the shipping and transportation of coal. It was a practice of the respondent at that time to place private cars at the mines without taking those cars into account in arriving at the pro rata distribution to which the mine was entitled. In other words, the mine was given all the private cars assigned or consigned to it and in addition its pro rata share of system cars. The court in substance found as we had previously found in the *Hocking Valley case* that the owners of individual cars or those entitled to them by contract were not to be deprived of the exclusive use of such individual cars but that such cars assigned by the owner to be loaded at specified mines should be charged against the specified mine as part of its pro rata distribution of cars. At page 114 the court said:

> It would not be reasonable to hold that the exclusive use of individual cars by the mine operators under a system which has grown up during half a century and under which the trade has enormously developed, and upon the faith of which mine operators have invested millions of capital, often at times when the railroad company had neither money nor credit with which to increase its equipment, is now to be denied unless it could be done upon fair terms mutually acceptable to the mine operators and the railroad. The use of individual coal cars is not peculiar to the Baltimore & Ohio Railroad, but has been quite generally used from the beginning of the coal trade in the United

States and in England. While it is true that, if the railroad was so disposed, it might by not keeping up its coal car equipment gradually force all mine operators to provide individual coal cars, which would in the end leave in the business only those operators who were able to obtain and profitably use the large capital required to purchase individual cars, it does not appear that the railroad has pursued that policy. On the contrary, in 1905 it ordered 5,000 new coal cars of large capacity, increasing its total coal car equipment to about 45,000, and also increased its engine equipment so that it is abundant. Under the present system of individual ownership of coal cars it is not unreasonable that the owner shall have the exclusive use of his individual cars; on the contrary, it is only just. But, under the actual circumstances of the business of the coal trade on the Baltimore & Ohio Railroad, from which it is apparent that the great struggle of the mine operators is to get sufficient cars to ship their product during the winter months, and that their business existence depends upon it, it is not unreasonable to hold that the railroad shall do all that it is practicable to do to avoid subjecting the operators who do not have the use of individual cars to unreasonable disadvantage. While it is true that the existence in the trade of a large number of individual cars does increase the total car equipment, and so far as the individual cars satisfy the requirements of their owners does increase the number of free equipment cars which the railroad has at its disposal, it still is a fact that in times of car shortage the demand is so great that all the mines having individual cars require and get their full percentage of the railroad's equipment without reference to their own cars.

Under the provisions of the interstate commerce act the railroad must abstain from giving any undue or unreasonable preference or advantage to any mine owner in any respect whatsoever. The duty of the railroad under section 1 is to furnish transportation upon reasonable request. It is not the duty of the shipper, but of the railroad, to provide the required vehicles of transportation. If, for convenience or of necessity, the vehicles are furnished by certain of its shippers, and are run regularly on the road just as its own equipment is run, they are, I think, to be treated for some purposes as part of the equipment of the road. These regularly run individual cars occupy the tracks and sidings. They are drawn by the locomotives, and are operated by the employes of the railroad company, and must lessen the facilities in that respect of the independent operators. Indeed, an objection of the railroad company to individual ownership of cars is that they require special switching and special care to collect and classify them in order to haul them to their respective destinations. As the independent mine operators have in this manner to suffer from individual cars being transported as part of the railroad's equipment in such large and constant numbers running regularly on the railroad's lines, it seems only reasonable that, when distribution upon percentage is made, all this regular equipment then available should be taken into the calculation, and not to first deduct the individual cars and give the independent mine operators only their percentage of the remaining available equipment. This taking of individual cars into calculation would not be depriving the individual car owner of the exclusive use of his cars, and it would not be depriving him of any contractual right which he is entitled to retain and enjoy under the interstate commerce act. The mine operator would in any state of the car supply continue to get the exclusive use of his individual cars as before, but, when the supply was short, he would not get so many of the railroad's general equipment. It would be rectifying an un-

reasonable disadvantage which has been shown to work a serious hardship upon the relator and the independent mine operators in the Fairmont region.

This case came before the United States Circuit Court of Appeals for the Fourth District on writ of error upon the judgment of the lower court by both the petitioner and respondents. In *U. S.* v. *Baltimore & Ohio R. R. Co.*, 165 Fed. 113, the court affirmed the decision of the lower court on the question of private cars. The case reached the Supreme Court of the United States upon error prosecuted by the Baltimore & Ohio Railroad and the Fairmont Coal companies, and in *Baltimore & Ohio* v. *Pitcairn Coal Co.*, 215 U. S. 481, the Supreme Court reversed the decision of the lower court in all particulars on the ground that the court was without jurisdiction to pass upon the matters involved until after the commission had been properly afforded an opportunity to exercise its administrative functions. In the majority report reference is made to a statement of the general principles which should be applied as found in the decision of the Circuit Court of Appeals in the case cited, and an extract from that decision appearing on page 122 is quoted. The principles there set forth are in entire accord with what the commission has always held should govern. In fact, the private-car owners are seeking no different principles in this proceeding. They are contending for the right to have the exclusive use of their private cars even though during periods of car shortage the private cars so placed at a mine may exceed the pro rata share to which that mine would be entitled if dependent solely upon system cars. They are seeking this right only in the event that there is a shortage of cars unaccompanied by a shortage of locomotives, track facilities, congestion, or any cause which would tend to interfere with normal operation of the carriers. In the event that by the placement of private cars in excess of the pro rata distribution an undue proportion of the general facilities of the carrier are accorded to the private-car owners and thus denied to users of system cars, the private-car owners are willing to share the disability with all other shippers.

Under the majority decision, however, under a situation such as this the private-car owner would be denied the right to have its cars placed in excess of the pro rata distribution and the cars over and above such pro rata distribution would remain idle; this during a period when there was a general clamoring for coal with the resultant high prices. The majority report also refers to and quotes at length from the decision of the commission in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92. In that case the commission adhered to what it had previously found in the *Hocking Valley case*, and the paragraph quoted is in entire accord with what the private-car owners are here seeking.

In its report to the Congress on discriminations and monopolies in coal and oil, made in 1907, the commission expressly recommended that—

> After reasonable time carriers engaged in interstate commerce be prohibited from using "individual" or "private cars" for the handling of coal traffic; and further, that when a carrier is unable to furnish all the cars required by all the shippers upon its line, all cars in service on the road, excepting individual or privately owned cars until their use is prohibited, be treated as the equipment of the company, and subject to distribution according to the system or plan in effect at that time.

Congress did not take the affirmative action recommended although the commission in many of its annual reports to the Congress embodied recommendations of like effect.

In *Ruttle* v. *Pere Marquette R. R. Co.*, 13 I. C. C. 179, the commission in dealing with the private-car situation, said:

> But while the right to use private cars may doubtless be denied to shippers by appropriate legislation, we are not prepared, in the absence of a specific enactment to that effect, to say that their use is in itself unlawful. Whether under a given set of circumstances their use results in an unlawful advantage to their owners and in an unlawful disadvantage to others is another question, which under existing legislation is clearly under the control of the Commission, and may be made the basis of such relief as the facts in any particular case may justify.

Private cars have been in operation in this country over half a century. The record shows that the Westmoreland Coal Company has been operating private cars for more than 60 years and the Berwind-White Company for more than 35 years. Under the system of private ownership of coal cars the trade has enormously developed, and dependent upon its continuance these mine operators and others have invested millions of capital, often at times when the railroads had neither money nor credit upon which to increase their equipment.

Under the circumstances it seems clear that it would not be reasonable to hold that the exclusive use of such private cars should be denied, in times of car shortage, even though the private cars so placed at the mine are in excess of the pro rata share of cars currently accorded mines dependent upon system cars. The use of the private car during car-shortage periods increases the supply of system cars available to the operators dependent upon them and is a real benefit.

This naturally leads to the question, what is the material complaint against the use of the private car? Here again the answer is, as in the railroad-owned or total-output contract mine, the labor supply, but as heretofore pointed out, this is a matter which precedes any transportation service which a carrier is called upon to perform, and is not a matter upon which we could predicate a finding of un-

just discrimination or undue prejudice. Orders under section 3 are usually in the alternative and give the carrier the option of removing the undue prejudice in one way or another. In the event that the order were made in the alternative in this case, by what means could the carrier comply with our order? It certainly has no control over the mines. It could not direct that the labor supply at certain mines be transferred to other mines so as to enable those mines to operate equal time. The element of taking mine labor into consideration in determining whether or not discrimination or undue prejudice exists under the interstate commerce act is entirely too remote and speculative to be given any consideration whatsoever.

As above pointed out, the private-car owners are not here seeking any advantage over the mine owners dependent upon system cars in the use of any of the general facilities of the carriers.

Is there anything unreasonable in the practice of according to private-car owners a greater proportion of the carriers facilities than that accorded operators dependent upon system cars when in so doing it is not to deny the operators dependent upon system cars reasonable service? Or, stated differently, if the carrier moves all traffic offered it by the operators both in private and system cars, and it so happens that there is a shortage of system cars, and that the private cars predominate in number, would it be unreasonable to transport all the private cars and system cars, or should the private cars moved not exceed the percentage of system cars placed at the mines and offered for transportation, the balance of the private cars to remain idle? To state the proposition is to answer it.

The act contemplates the furnishing of service and of the facilities by the owner or the shipper of freight. Section 15, paragraph (13).

The Congress has thus recognized the use of the privately owned cars and has limited our power to touch that right to our power over the carriers. We can not declare that right unreasonable or unjustly discriminatory, or unduly prejudicial or unlawful because of something that is inherent in the nature of that right, because by so doing we would be abrogating a right which the Congress has recognized and which we have stated could only be abrogated by appropriate legislation. If in the exercise of that right preference is accorded to the private-car owners in the use of the carriers' general facilities another question is present. A perusal of our decisions in this question, as well as those of the courts, will show them to be in full accord with this reasoning. There has been no change in the law since those decisions which would warrant us in now holding otherwise.

Upon the further hearing much new evidence was submitted to support the claim of the necessity for the use of private cars by some of our most vital industries.

The private-car owners can be grouped generally into three classes:

(1) Those that own the plants, the mines, and the cars, the latter being used to transport coal from the owned mines to the plants of the owning company. In this class are included the Bethlehem Steel Corporation, the United States Steel Corporation and its subsidiaries, Pittsburgh Plate Glass Company, Youngstown Sheet & Tube Company, Wisconsin Steel and International Harvester Companies, Ford Motor Company, and the Steel Company of Canada.

(2) Those that own the cars and the plants, but not the mines, and which have long-term contracts with specified mines for the entire output of such mines. Included in this class are the by-product coke ovens not connected with the steel and other plants enumerated in class (1), and the Public Service Electric Company.

(3) Those that own the cars and the mines, but which are dependent upon outside contracts for the disposition of the coal. In this class may be included the Berwind-White Coal Company and the Westmoreland Coal Company.

The necessity of each class for a regular supply of suitable coal was explained at great length by high officials of corporations represented by each of these groups. Time and space will not permit an elaborate discussion of the vast amount of the very illuminating facts presented by each. I will therefore content myself to briefly point out some of the essential facts which show conclusively the absolute necessity for the steel and by-product coke corporations to secure a regular and adequate supply of suitable coal, which the past has demonstrated can not be secured alone in system cars during periods of car shortage.

The Bethlehem Steel Corporation at the time of the hearing operated over 2,000 by-product coke ovens, which are located at its different plants. These plants produce nearly every class of finished product, including rails, frogs, switches, roalroad cars, structural steel, and ordnance material. These products require the finest grades of steel, particularly with reference to phosphorous and sulphur content. As the use of steel making continues to develop, the necessity for selecting special coals will increase. One of the greatest economic developments in the steel industry during the past 20 years has been the utilization of by-products of coking coal. These by-products can only be utilized at the works, because at the coal mines there are no uses for the gas and other by-products. The character of its coking qualities and its physical characteristics

have to be considered with great care to make the coke from the by-product ovens suitable for immediate use in the blast furnaces. It is necessary, therefore, to select the coal mines which produce suitable coal, and even at best the coal from suitable mines must usually be mixed with coal from other mines to get the desired results. Coke of an inferior quality manifests itself mischievously in a blast furnace on account of what is termed "structure." Not all low-volatile coal offered can be used, because to be suitable it must be of a certain chemical composition and possessing a property commonly called "caking." For the steel industry coke in large lumps is necessary, the size being important on account of the service being required in the furnace, thus narrowing the field from which coal for this purpose can be secured. This property of the coal which results in "caking" is lost by storage. A daily tonnage of coke is required, as blast furnaces are designed and built for continuous operation. Interference with this operation means many ills to the furnaces and their subsequent operation.

This corporation owns 31 coal mines, with an approximate present capacity of 9,500,000 tons per annum. These mines were most carefully selected for the metallurgical and coking qualities of their coal. Of the coal available to it only 15 or 20 per cent is suitable for coking purposes. Over 300 coal properties were tested with a view to purchasing, and only 5 per cent of them contained coal meeting the physical and chemical requirements to produce coke for steel making. After the selection and purchase of these specific mines it proved impossible, in times of car shortage, to move enough coal from them to the plants to keep the plants in operation. Partial shutdowns with attendant unemployment followed. The result was the purchase of 3,975 private coal cars, which are used solely in transporting coal from the mines to its own plants for its own consumption. No system cars are used at the mines using private cars.

A by-product coking plant is usually made up of one or more blocks or batteries of ovens. All batteries in one plant are of uniform height. Each oven has a system of flues in which gas is burned and the oven is heated through a silica wall from 4 to 6 inches in thickness. The ovens are built of silica brick. It is necessary to heat the oven very gradually as the brick has a very high factor of expansion. One battery of ovens will expand as much as four feet. The expansion joints in the brick work are between every two ovens, which makes it necessary to heat these two ovens carefully and gradually. It takes from six to eight weeks to heat a plant before it can be put in operation. If shut down suddenly it would wreck the brick work and cost from $300,000 to $500,000 for replacement. If the battery has to be cooled off it is put out of operation

for from two to three months. The brick required for these ovens are in specially molded shapes and are not carried in stock, and take four months to make. The essential elements for the successful operation of a by-product coking plant are a continued operation, with a continuous and regular supply of high-grade coal of uniform quality. A continuous operation is necessary because the by-product plants are under contract to furnish daily a fixed amount of gas to the gas companies, which, in turn under their franchises, furnish gas to numerous municipalities, and generally speaking, have no facilities of their own for producing gas. A regular supply of a particular kind of coal is necessary to secure the volume of gas required. The quantity, quality, and b. t. u. content of the gas so furnished must be constant, and must also meet trade requirements.

Not all coal is good gas burning or coke running, due to the volatile content. A sudden change from one coal to another would cause trouble. As indicating the importance of the constant supply of suitable coal, one of the large by-product plants maintains a test plant to determine the kind of coke which can be made from the different grades of coal. Before contracting for coal from 500 to 1,000 tons of coal are run through the plant and the cokes thus produced are furnished to the trade for the purpose of determining whether that particular coke will meet requirements. Coke produced at such by-product plants must be of uniform grade, low in sulphur, and uniform in structure, as it competes with that received from the beehive coke ovens located at or adjacent to the mines, which always secure a uniform supply of coal. Beehive ovens are crude, simple, and inexpensive; can be started up or shut down without serious injury, and are located close to the mine. They receive their coal continuously from the same mine and therefore produce a uniform product. They are therefore not subject to the transportation difficulties encountered by the by-product ovens. Coke made in by-product ovens is to a large extent supplied to plants operating water-gas machines. This coke must be low in ash, that does not fuse at low temperature. Otherwise the machines will become clinkered and the capacity will be reduced 50 per cent. If the coke is bad the gas company's capacity is cut down and the public is not supplied. The by-product coke industry is vital to the private individual, or the householder because it helps to cheapen domestic gas, which supplies a high-grade domestic fuel that is cheaper than anthracite. It supplies sulphate ammonia which is the best raw material for fertilizer for the farmer, and has increased the output of this fertilizer material over 100 per cent. In 1900 a little over 1,000,000 tons of by-product coke were produced, whereas in 1920 the output was over 28,000,000 tons. Over $200,-

000,000 has been invested in the last 10 years in by-product coke plants and their accessories. They are built throughout the country to augment the natural gas which is giving out in various districts. Its use is being extended very rapidly. The basis for the future chemical industry is dependent upon it. The dye industry in this country has grown enormously as a result of the by-product coke operations. The by-product coke industry of this country has made enormous strides in the last few years. The record shows that for every ton of coal coked in a by-product oven there is saved approximately, varying with the kind of coal used, 25 pounds of sulphate of ammonia, 6,000 feet of gas, 10 gallons of tar, and 3 gallons of motor fuel.

The by-product coke operators generally have had unsatisfactory experience in keeping their plants in operation with the kind of coal necessary, particularly during periods of car shortage. To protect against such shortage these private corporations have purchased coal cars and have invested therein several millions of dollars.

The aggressive and destructive attack which the majority report is upon the by-product coking industry, retarding advance in the art of steel making and utilization of coal-tar products, is timely for the nation's rivals. The producers of Germany, and other European countries, are consolidating their position to take control of world markets, including our own, and to meet our growing rivalry. The phenominal development of the coal-tar industry in this country since the beginning of the World War has been well said to be "one of the romances of American business, and world business as well." The American dye industry is an illustration, but dyes are only one of many coal-tar products. Others include roofing and road material, fertilizers, ammonia, benzol, motor benzol, toluol, naphtha, benzine, toluene, naphthalene, photographic materials, medicines, perfumes, flavors, and articles too numerous to mention.

The majority report gives this industry the most serious and alarming setback it has ever had. It is the greatest benefit that could be conferred upon our foreign competitors in science and industry. The one thing above all others they would have us do is to abolish the use of the private car. I can see no justification or excuse for the damage done. The private car, without adding a penny to the general burden, increases transportation facilities generally available. Its owners provide for themselves additional cars without which they would be entitled to share in the distribution of all other equipment. It is undeniable that those who oppose their use are benefited by them. To bar them serves only to foster private greed and envy at the expense of public welfare.

I have not attempted to deal exhaustively with the mass of unanswerable testimony placed before us upon further hearing which, seemingly, the majority report utterly ignores. Witnesses Rust, Berwind, Schwab, and other leaders in the industrial arts have made a showing which should have enlightened us. I am unable to comprehend why they failed. They have conclusively demonstrated that the private car is essential to the economical and efficient bunkering of ships and to the carrying on of many of the most important industries in the country. No attempt to answer their testimony was made, and no answer is possible. Some of the most important achievements within the Nation's reach are dependent upon the use of the private car. On questions regarding industries so highly technical and scientific as the making of steel, and many other products, we should accept as basic facts the conclusions of specialists. We have such conclusions by the most eminent authorities in the country. By disregarding them and setting up our own impressions, we incur the censure that arbitrary action, without support in law or fact, denying justice, should bring upon us.

Cox, *Commissioner*, dissenting:

For reasons already set forth in my former dissenting expression in this case, 80 I. C. C. 520, at page 587, and from consideration of the additional testimony furnished at the further hearing, I am unable to concur in the findings of the majority.

This question is generally recognized as of vital importance, and perhaps no question which has come before the commission in recent years is more closely related to the industrial life of the Nation than this case which deals with the distribution of coal cars. Public utilities, transportation agencies, and other industries which are not only intimately associated with the distribution of heat, light, and power, but with practically all the necessaries of life as well, are all dependent upon a regular and dependable fuel supply. The present efficiency in transportation is largely dependent upon an unfailing supply of coal. If this supply is reduced, or even restricted, the industrial life of the country is at once affected and the public welfare suffers accordingly. President Coolidge has emphasized the need for the elimination of waste and there is splendid opportunity for cooperation along these lines in the production and distribution of coal. Our position in connection with the competitive markets of the world also emphasizes the need for such cooperation. It is my thought that the use of the assigned car as well as private cars is along the line of efficiency and economy of operation. They both occupy an important place in the field of efficient transportation and their use should be encouraged rather than condemned.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 23d day of December, A. D. 1924

No. 12530

In re Distribution among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel

It appearing, That by order dated March 22, 1921, the commission entered upon an investigation into and concerning the reasonableness and propriety of car-distribution rules so far as they apply to privately owned coal cars and cars furnished for railway-fuel coal, with a view to prescribing such just and reasonable rules and regulations as might appear to be necessary;

It further appearing, That by order entered June 13, 1923, the commission entered its order requiring the respondents to change their practices with regard to the distribution of privately owned coal cars and cars placed for railway fuel coal so as to comply with the findings of the commission embodied in its report, filed herein, 80 I. C. C. 520;

It further appearing, That by order entered on October 5, 1923, the commission reopened the case for further hearing, and pending its report on said further hearing, the effective date of said order entered on June 13, 1923, has been postponed until January 15, 1925;

And it further appearing, That said further hearing has been had, and the case submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the order entered in this proceeding on June 13, 1923, be, and the same is hereby, further modified so as to become effective on March 1, 1925, instead of on said January 15, 1925.

It is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1925

8552

INTERSTATE COMMERCE COMMISSION.

ASSIGNED CARS FOR BITUMINOUS COAL MINES.

No. 12530.

IN RE DISTRIBUTION AMONG COAL MINES OF PRIVATELY OWNED CARS AND CARS FOR RAILROAD FUEL.

51641—23——1 WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

ASSIGNED CARS FOR BITUMINOUS COAL MINES.

No. 12530.

IN RE DISTRIBUTION AMONG COAL MINES OF PRIVATELY OWNED CARS AND CARS FOR RAILROAD FUEL.

Submitted March 2, 1923. Decided June 13, 1923.

1. Paragraph (12) of section 1 of the interstate commerce act *held* not in terms to prohibit the practice of assigning cars for railway fuel and private cars to coal mines under the limitations fixed in *R. R. Com. of Ohio* v. *H. V. Ry. Co.*, 12 I. C. C., 398, and *Tracr* v. *C. & A. R. R. Co.*, 13 I. C. C., 451. *Assignment of Freight Cars*, 57 I. C. C., 760, followed.
2. The practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous coal mines in excess of the ratable share contemporaneously distributed to bituminous-coal mines upon their lines which do not receive assigned cars, found for the future to be unjust and unreasonable, and unduly and unreasonably prejudicial to mines not receiving assigned cars and unduly preferential of mines which are furnished such cars in excess of the ratable proportion. Cars specially placed by order of the commission under the provisions of paragraph (15) of section 1 of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires.

Henry Wolf Biklé, *J. C. Bills*, *W. S. Bronson*, *H. T. Dick*, *O. W. Dynes*, *R. V. Fletcher*, *August G. Gutheim*, *W. R. McFarland*, *W. A. Northcutt*, *H. R. Preston*, *C. J. Rixey*, *C. M. Sheafe*, *jr.*, *D. Lynch Younger*, *F. M. Rivinus*, *Frank W. Gwathmey*, and *J. H. Fishback* for respondents.

Frederic L. Ballard and *Jas. W. Carmalt* for private coal-car owners.

Butler, *Lamb*, *Foster & Pope*, *E. S. Ballard*, and *Carl D. Loos* for National Coal Association; *A. M. Liveright* for Central Pennsylvania Coal Producers' Association; *L. C. Boyle* and *George N. Brown* for Southern Ohio Coal Exchange; *R. W. Ropiequet* for Illinois Coal Traffic Bureau; and *Eugene McAuliffe* for Union Colliery Company, King Harlan Coal Company, Union Electric Company, Detroit Edison Company, and Milwaukee Electric Railway & Light Company.

J. J. Kintner for United Mine Workers of America, District No 2; *Albert L. Vogl* and *Harry F. Nash* for Colorado & New Mexico Coal Operators' Association; *Jonas Waffle* for Indiana coal operators; and *S. C. Higgins* for New River Coal Operators Association.

REPORT OF THE COMMISSION.

AITCHISON, *Commissioner:*

This is a proceeding of investigation upon our own motion, entered upon March 22, 1921, with respect to the reasonableness and propriety of the present car-distribution rules of the respondents, all the steam-railroad carriers subject to our jurisdiction, in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to prescribing such just and reasonable rule or regulation as may appear to be necessary. Later, we instituted another proceeding of investigation, No. 13896, *In Re Rules Governing Ratings of Coal Mines Other Than Anthracite and Distribution of Cars to such Mines*, which brought before us as to the same respondents the propriety, justness, and reasonableness of the existing mine-rating rules and rules for the distribution of cars as between mines of the class indicated in the title of that proceeding. For procedural purposes the two investigations were consolidated, and a great amount of testimony of wide scope was taken, applicable as might be to one or the other or both of the consolidated proceedings. Thereafter we severed the two proceedings, and No. 12530 has been submitted for determination, while No. 13896 remains unsubmitted.

Essentially involved is the practice of the carriers as to what are commonly known as assigned cars for the loading of coal. Throughout the hearing the testimony dealt with the practices of the railroads using bituminous coal for fuel, and our present determination will likewise be so limited. References to coal herein may be taken as meaning bituminous coal, unless the context shows that anthracite was intended to be included. The inquiry necessarily involves the right to make an assignment or designation of certain cars to specific mines for definite shippers or consignees, and the rule to be observed in times of car shortage in counting such cars in the distribution of equipment among the various mines upon the railroad or a division. The propriety of the practice raises the questions as

to whether it is in terms forbidden by law; and if not so proscribed, whether the practice is just and reasonable and otherwise conforms to the tests of the interstate commerce act. Three classes of cars are involved: (1) System cars, or cars of railroad ownership, set for loading upon the line of the owning carrier or such as may be on its line of railroad and not owned by some specific shippers or restricted as to use; (2) cars for foreign railway fuel, which are delivered to another carrier consigned to particular mine operators for loading with fuel for the use of the delivering carrier and return to it; and (3) private cars, which include cars owned or leased or subject to the exclusive control of particular persons, not carriers by railroad, who deliver them to the railroad for placement at designated mines for loading and subsequent transportation as desired by the private-car owners. The coal to be transported in the private cars may or may not be intended eventually to be used for railroad fuel.

Counsel for respondents thus summarize the manner in which assigned cars are placed and how they are counted, in connection with other cars, in determining the cars to which mines are entitled when, by reason of car shortage, it is necessary to distribute the available equipment on a basis less than the aggregate of orders based on the respective mine ratings:

> Assigned cars must be placed at mines to which assigned.
>
> If the number of assigned cars exceeds the number of cars to which the mine is that day entitled under the rate of coal car distribution, the mine is not entitled to any additional cars for commercial coal loading that day.
>
> If the number of assigned cars does not equal the number of cars to which the mine is that day entitled under the rate of coal car distribution, the mine shall be given enough system cars in addition to bring its total placements that day up to the number to which it is entitled.

Throughout this report the term commercial mines will be understood as referring to a mine which does not receive assigned cars.

As to each of these three classes of assigned cars the issue is presented whether the law in terms forbids the present practice of the respondents, and if not, whether we should find upon the record that the present practice is in any respect unjust and unreasonable or otherwise in violation of any provision of the interstate commerce act. In the consideration of these questions, we should have in mind the provisions of paragraphs (10), (11), (12), and (14) of section 1. For convenience, these paragraphs are stated

in the margin.[1] Paragraph (1) of section 3 also must be considered.

Paragraph (12) was the fourth paragraph of section 402 of the transportation act, 1920, and thus was added to and became a part of section 1 of the interstate commerce act, February 28, 1920. It will be necessary to bear in mind the requirement found in paragraph (6) of section 1, which in effect may be said generally to impose the duty upon all common carriers subject to the provisions of the act to establish, observe, and enforce just and reasonable transportation regulations and practices. It will also be essential to have before us paragraphs (15), (16), and (17) of section 1 of the act, which permit us in times of emergency to suspend the operation of any or all of the rules, regulations, or practices then established for such time as we may determine, and to give necessary directions as to car service so as best to promote the service in the interest of the public and the commerce of the people, and authorize us to give preference and priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as we may determine. The powers conferred upon us in the three paragraphs last mentioned have been exercised repeatedly.[2]

The respondents have proposed for approval a code of rules as to mine ratings and car distribution. As to the assignment and counting of private cars and cars for railroad fuel, their proposal is found in the following suggested rules:

---

[1] (10) The term "car service" in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act.

(11) It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations or practices.

[2] 34th Annual Report of Commission, page 11; 36th Annual Report of Commission, page 9.

(8) Private cars, such cars as are assigned to mines for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in *R. R. Commission of Ohio, et al.* v. *H. V. Ry. Co.*, 12 I. C. C., 398, and *Traer* v. *Chicago & Alton Railroad Co. et al.*, 13 I. C. C., 451, and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

(9) If the number of assigned cars placed at a mine during any period, as provided in rule 8, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply prorated to the other mines, based on a revised percentage by reason of such elimination.

(10) If the number of assigned cars placed at a mine during any period, as provided in rule 8, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

The rules proposed have the general support of the respondent carriers. They are opposed in their entirety by many associations of mine operators and representatives of mine labor. The National Coal Association, an organization with a large and widespread membership of bituminous-mine operators throughout the United States, opposes the rules in their application to railroad fuel, but takes no position as to the assigned private cars.

I.

The rules proposed are the same as those in effect when the present proceeding was instituted, upon the lines of respondents which followed the practice of assigning cars, except for the addition of the words "and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission," in the first rule quoted. It seems to be taken by all parties that the rules quoted, so far as they relate to railroad-fuel cars, expressly promulgate the practice which was put into effect by the carriers following our decision in *R. R. Com. of Ohio* v. *H. V. Ry. Co.*, *supra*, and in *Traer* v. *C. & A. R. R. Co.*, *supra*, which we will hereinafter refer to as the *Hocking Valley case* and *Traer case*, respectively. The railroads, proponents of the rules quoted, rely upon the authority of those decisions and subsequent decisions applying or sustaining them; while the opponents of the rule contend that the proposals are distinctly counter to the mandate contained in paragraph (12) of section 1 as to the distribution and counting against the mine of all cars furnished or used for the transportation of coal. The opponents of the proposed rules also contend that the assignment of cars as contemplated is an unjust, unreasonable, and unjustly preferential and prejudicial practice in violation of paragraph (6) of section 1, and paragraph (1) of section 3 of the act.

The question of the legality of the practice of assigning cars for railroad fuel substantially in the method outlined in the proposed rules was so carefully considered by us in *Assignment of Freight Cars*, 57 I. C. C., 760, that but for an attack upon the authority of that report as a precedent we would not deem it necessary to further examine the matter, as there has since been no change in the statute law and the weight of judicial authority has supported the construction we there placed upon paragraph (12) of section 1. But the protestants have pointed out, properly, that the report cited, made in response to a resolution of the Senate of the United States, was necessarily of an *ex parte* character, and we have accordingly permitted all parties to be heard fully upon this basic question.

A brief review of our previous decisions involving this subject will be helpful.

Prior to 1907 the railroads commonly delivered to coal mines cars privately owned or leased, foreign railway-fuel cars, and cars for the carriers' own fuel loading, according as the cars were consigned or assigned and as the railroad had contracts for purchase of fuel coal. It was the usual practice to refrain from counting or charging such cars against the distributive shares of the mines to which they were given. All such cars were given to the mines for which they were intended and such mines received in addition their full share of the other cars available for distribution. Thus the cars assigned were not counted against the mine, as the phrase commonly ran.

The practice of the carriers in not counting foreign railway-fuel cars and private cars against the mines to which consigned or assigned was brought before us by complaints filed by the Railroad Commission of Ohio against the Hocking Valley Railway Company and the Wheeling & Lake Erie Railroad Company, respectively, which were disposed of together. The second case involved the so-called private cars, claimed to have been bought by certain coal operators, which were not included in or charged against the percentages in distribution of cars to coal-mining companies. Both complaints put in issue the practice of defendants in permitting the assignment of foreign railway-owned fuel cars consigned to certain coal companies with which the foreign railway had contracts stipulating for the furnishing of cars, and failing to count them against the mines. The basis of both complaints was unjust discrimination under the law as it then stood. And, although the right of the commission to prescribe a regulation or practice in respect to transportation which was just, fair, and reasonable to be thereafter followed was adverted to, the basis of our decision was discrimination. Our decision, made

July 11, 1907, has been cited. We held in effect that the private cars and foreign railway-fuel cars as described should be given to the mines to which they were consigned or assigned, but must be counted against the distributive share of the mines. If such specially consigned or assigned cars equaled or exceeded the distributive share of a mine receiving them, the mine should have no additional cars, but if not equal to the distributive share, it should be given only sufficient additional cars to make up its distributive share.

In the *Traer case*, April 13, 1908, we followed the *Hocking Valley case*, and further held that cars used by defendants upon their own lines for transportation of their own necessary fuel supply may be given in any numbers to the mine or mines from which such fuel supply is received, but if such mine or mines also ship commercial coal the fuel cars so supplied must be counted against the mine or mines. An order was made to carry the findings of discrimination into effect. Injunction proceedings brought against the commission by interested carriers resulted in a decree of the Circuit Court of the United States for the Northern District of Illinois enjoining the effect of the order so far as it required carriers to count their own fuel cars against the mine shares, but the order was sustained in other respects. *Chicago & A. R. Co.* v. *Interstate Commerce Commission*, 173 Fed., 930. On appeals by the commission the Supreme Court reversed the decree of the lower court and held the act had delegated to us authority to determine on complaint the question of distribution of the carrier's own freight cars in times of car shortage as a means of prohibiting the undue preference and unjust discrimination forbidden by the act. Power to make the order, and not the expediency or wisdom of it, was the essential issue before the court. *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 215 U. S., 452, *id.* v. *C. & A. R. R. Co.*, 215 U. S., 479.

The rule laid down by us in the *Hocking Valley case* was followed in *Rail & River Coal Co.* v. *B. & O. R. R. Co.*, 14 I. C. C., 86, and in *Hillsdale Coal & Coke Co.* v. *P. R. R. Co.*, 19 I. C. C., 356. In the last-cited case a rule applied by the carrier was condemned as giving undue advantage in distribution to certain mines and as contrary to the decisions of the commission previously referred to, and in a subsequent report, 23 I. C. C., 186, reparation was awarded. The award of reparation was later sustained by the Supreme Court. *Penna. R. R.* v. *Clark Coal Co.*, 238 U. S., 456.

In our report to the Senate and House of Representatives in *Coal and Oil Investigation*, 31 I. C. C., 193, 218, we repeated the substance of what we had found in the *Hocking Valley* and *Traer cases*. We expressed the view that when the carriers should adjust their rules in accordance with the views of the commission as ex-

pressed in the cases cited (and others) no doubt many of the irregularities found to exist would be eliminated.

The rule thus limiting the permissible assignment of cars either privately or railroad owned without counting them against the distributive share of the mines was definitely established and remained in effect as a rule in a state of repose until the advent of Federal control over the railroads and over the production, distribution, and price of coal. That rule was substantially as found in rules 8, 9, and 10 proposed by the respondents, with the exception of reference to cars specially assigned by our order, which is a new addition. The rule was accepted as settled, and although never acquiesced in by commercial mine operators as settled on the right basis, was not the subject of any formal complaint to which our attention has been directed down to the period of Federal control.

The United States Fuel Administration put into effect a zoning system for the distribution of coal. About July 1, 1918, authority for use of assigned cars for railroad fuel was withdrawn, but the actual discontinuance was somewhat delayed pending some provision being made to take care of carriers' emergency needs when necessary. No change was made in the rule with respect to private cars. Effective October 10, 1918, the United States Railroad Administration promulgated a code of rules for rating tipple coal mines (other than anthracite) for car distribution purposes, known as Circular CS–31. rules 6, 7, and 8, of that circular provided:

> 6. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.
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> 7. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.
>
> 8. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

This code of rules was superseded, effective January 10, 1920, by Circular CS–31 (Revised) and rules 6, 7, and 8 became rules 8, 9, and 10, but contained no change in substance.

The essential change effected by these circulars from the rules laid down in the *Hocking Valley* and *Traer cases* was to withdraw the authority for the placement of railway-fuel cars on an assigned basis from the individual rail carrier and to lodge that power in the car-service section of the United States Railroad Administra-

tion. No change was made in the counting requirements as announced in the *Hocking Valley* and *Traer cases*. When Circular CS–31 was promulgated there was no general car shortage, and the effect was not apparent. By the fall of 1918, there was a car surplus which continued until the summer of 1919, and in the meantime the fuel administration had discontinued operation. A car shortage developed in the late summer, and numerous railroads found themselves short of coal. The railroad administration took the position that if an operator had a contract for the loading of railroad fuel, he would have to load on that contract preferentially and without assigned cars, or the coal would be confiscated at the tipple before it was commercially billed. This practice continued until the fall of 1919. Then the central coal committee under the railroad administration began to function and continued until the termination of Federal control March 1, 1920. The central coal committee directed that cars for railroad fuel be placed in preference to cars for coal loading for other purposes. This was the status which existed at the time of the enactment of the transportation act, 1920, which, as we have seen, brought paragraph (12) into section 1 of the interstate commerce act, effective March 1, 1920.

On March 2, 1920, in a notice to carriers and shippers, we recommended that until experience and careful study demonstrated that other rules would be more effective and beneficial, and especially during the remainder of the early spring, the uniform rules as contained in the railroad administration's car-service section Circular CS–31 (Revised) be continued in effect. These rules made no provision for the assignment of cars for railroad fuel loading after the termination of Federal control. We had suggested that carriers and coal operators attempt to compose their differences with respect to the matter of the carriers' fuel supply, but conferences to that end were unavailing. The supply of cars available for the transportation of coal was insufficient to meet the demand and carriers resorted to wholesale confiscations in order to protect their fuel needs. Injunction proceedings brought against the practice of confiscation in at least one case resulted in a decree adverse to the carrier.

On April 15, 1920, in a further notice to carriers and shippers, we amended the recommendation in our notice to carriers and shippers of March 2, 1920, to read as follows:

> The Commission recommends that until experience and careful study demonstrate that other rules will be more effective and beneficial, the uniform rules as contained in the Railroad Administration's Car Service Section Circular CS–31 (Revised) be continued in effect, except that rule 8 as contained in said circular should be amended to read:
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> 8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in *R. R. Com. of Ohio*

et al. v. *H. V. Ry. Co.*, 12 I. C. C., 398, and *Traer* v. *Chicago & Alton Railroad Co. et al.*, 13 I. C. C., 451, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

Senate Resolution No. 376 was adopted May 24 (calendar day May 29), 1920. By it we were directed to inform the Senate upon what authority, if any, our order of April 15, 1920, entitled "Notice to Carriers and Shippers" was issued. In the preamble to the resolution the order of April 15, 1920, was set out in full. In our report in answer to that resolution, *Assignment of Freight Cars*, *supra*, on June 11, 1920, we reviewed our various decisions and those of the courts bearing on this question, and stated:

> The Commission is of opinion that paragraph (12) of section 1 of the interstate commerce act does not change the rule of law laid down in the *Hocking Valley* and *Traer cases*, *supra*. The paragraph states in statutory form that which had theretofore been the law, pursuant to the decisions of the Commission and of the Supreme Court of the United States.

The language of paragraph (12) of section 1 has remained unchanged. Although our construction of the paragraph was specifically brought to the notice of the Senate, in response to a call for information as to the authority for the issuance of our order, and although our action in this regard was reported to both the Senate and House of Representatives in the annual report which by law we are required to make to the Congress, there has been no legislation in the three years which have elapsed to correct any error of interpretation upon our part. A bill declaring that paragraph (12) carried a rule of equal proportionate distribution of cars to coal mines, introduced in the Senate in the Sixty-seventh Congress, first session, was not reported out of committee.[3]

If the statute in question is at all doubtful in construction, the construction adopted by this administrative agency in its enforcement, followed for many years, without any attempt of Congress to change it, even when a bill for that purpose was long pending before it, and without any challenge of its correctness by any other department of the Government, while not controlling, is not to be disregarded without the most cogent and persuasive reasons. *Robertson* v. *Downing*, 127 U. S., 607.

During a period of acute car shortage in the summer of 1920 it developed that rule 8, as embodied in our notice of April 15, 1920, had been and was being applied by particular carriers in a manner inconsistent with and contrary to the principles applicable in the

[3] S. 2003, introduced June 6 (calendar day June 7), 1921. The bill sought to amend paragraph (15) of section 1 of the act, by adding the following:

Provided, That nothing contained in the foregoing subdivision shall authorize the commission at any time to suspend, modify, cancel, alter, or amend the provisions of subdivision 12 of this section which require equal proportionate distribution of cars to coal mines.

Hocking Valley and *Traer cases*, and that uncertainty and undue preference and prejudice resulted. Accordingly, on September 28, 1920, we issued service order No. 18, effective October 1, 1920, and reissued the rules laid down in our order of April 15, 1920, with the following proviso:

Provided, That common carriers by railroad may not assign cars for their own fuel and fail to count such cars against the mine's distributive share unless the entire output of such mine is taken by such a carrier for a period of not less than six consecutive months.

This order remained in force until March 24, 1921, when it was canceled, as the emergency which had called it into effect had been measurably relieved. The investigation here under consideration was instituted simultaneously with the order of vacation.

The National Coal Association, protestant herein, contends that the first sentence of paragraph (12) is a broad requirement that every carrier shall make just and reasonable distribution of cars among mines at all times whether there be a car shortage or car surplus; that the duty of establishing rules which will effectuate such just and reasonable distribution is left with the carrier in the first instance, subject to review by us under the provisions of section 15. It is not disputed—in fact, it is contended—that under this sentence we would have ample power to prescribe the same rules as we did in the *Hocking Valley* and *Traer cases*. But that association contends that in the second sentence it is specifically provided that during any period when the supply of cars does not equal the requirements of the mines, it shall be the duty of the carrier to maintain and apply just and reasonable mine ratings, and to count each and every car furnished to or used by a mine for transportation of coal against the mine. The two provisions taken together, the application of ratings and the counting of every car, it is contended, require that during periods of car shortage available cars must be distributed in exact mathematical proportion to mine ratings. It is insisted that the words "to count each and every car furnished to or used by any such mine for transportation of coal against the mine" do not have the restricted meaning attributed to them by respondents. It is argued that the counting requirement of the *Traer* and *Hocking Valley* rule did not mean a mere enumeration of cars for the purpose of ascertaining whether the mine receiving them may have additional commercial cars, but did mean that all cars shall be exactly prorated in accordance with ratings. This is so because in every case where the *Traer* rule was discussed or announced there was attached to the counting requirement a qualification that all assigned cars shall nevertheless be delivered to the mines to which assigned or consigned, plainly indicating that an unqualified counting requirement would have called for a pro rata distribution.

The respondents place themselves behind the position that paragraph (12) does not change the rule in the *Hocking Valley* and *Traer cases*, taken by us in our report to the Senate, *Assignment of Freight Cars, supra.* They do not find it necessary to give the words "and to count each and every car used for transportation of coal against the mine" a meaning that all cars shall be prorated, whether assigned or unassigned. They find a purpose on the part of Congress in importing these words into the act, of adding a legislative mandate and to give permanency to a rule which had theretofore been an administrative determination, made upon the facts as appearing of record in particular cases, and therefore subject to change by the same administrative tribunal as its ideas of policy might vary, or as the record in particular cases might require. Our well-known practice has been to regard such determinations as made only upon the facts and under the conditions presented in the particular record. It was clearly within the power of Congress to apply at their convenience the rule, which, as is apparent from what has preceded, was a limitation upon a practice of the carriers long existing, which the carriers had claimed the right to perpetuate, and as against the perpetuation of which there stood merely an administrative finding of fact based upon facts as disclosed in records made some 13 years before, binding upon but a few out of the hundreds of railroads subject to the act. Up to the time of the enactment of the transportation act, 1920, our findings as embraced in the *Hocking Valley* and *Traer cases* had been bottomed upon the fact of discrimination, and we had not attempted to prescribe a rule as reasonable. We had no occasion to pass upon that question after the car-service amendment of 1917 was enacted[4] until the close of Federal control. It might well be that Congress found the rule to be reasonable, as well as nondiscriminatory, and that it intended to settle the policy that such cars must be counted against the distributive share, as that phrase was then understood, and to prohibit the placement of additional cars at mines for commercial loading if the assigned cars placed equaled or exceeded the pro rata share. The construction placed upon paragraph (12) as stated in our report to Congress is entirely consistent with this view.

We may briefly examine the legislative history of the provision in question. A comprehensive bill (S. 3288), intended to make amendments to the act to regulate commerce necessitated by the imminent return of the railroads from Federal control to their owners, undertook to prohibit the assigned-car practice in precise and detailed terms. (Section 34, page 76, of the bill as amended and agreed to

[4] An act to amend an act entitled "An act to regulate commerce," as amended, in respect of car service, and for other purposes, approved May 29, 1917.

by the Senate.) This bill in this respect had been strongly advocated by the National Coal Association, except that the association did not approve a proviso which would have given power to the proposed transportation board to assign railway-fuel cars. The association thereupon suggested to the chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, then considering H. R. 4378, that the committee incorporate amendments to carry into the House bill the provisions of section 34 of the Senate bill, with the exception of the proviso mentioned. The substitute proposed was presented to the committee of the House by counsel for the association. (Hearings upon H. R. 4378 pages 2172–2191.) Subsequently the house committee called before it COMMISSIONER CLARK, then chairman of this commission. A portion of the examination of our chairman by the chairman of the house committee appears in the margin.[5]

The bill as reported to the House did not contain the amendments suggested by the coal association, but did contain the precise language contained in the first two sentences of paragraph (12), as heretofore quoted. In Report No. 456 to the House of Representatives on bill H. R. 10453, which became the transportation act, 1920, the committee said:

* * * Originally the term "car service" included "the movement, distribution, exchange, interchange, and return of cars used in the transportation of property." As amended the term is made to include the use, control, supply, movement, distribution, etc., not only of cars, but of locomotives and other vehicles. It is further extended to include "the supply, movement, and operation of trains by any carrier by railroad subject to this act," and so require every carrier by railroad "to furnish safe and adequate car service."

[5] The CHAIRMAN. Mr. Clark, are you familiar with the provision inserted in the Cummins bill with reference to coal-car distribution? They have a section devoted to it.

Mr. CLARK. I remember there is such a section, but at the instant I do not recall the particular provision.

The CHAIRMAN. It seeks to carry into the law the orders of the director general now with reference to car distribution.

Mr. CLARK. That leads me to say that in the earlier days of the Railroad Administration this very question of refraining from counting against the distributive share of the mine the cars that were sent for the carriers' own fuel supply came up. Some members of the director general's staff favored going back to the old practice of the railroads; others of them favored following the rule laid down by us and sustained by the Supreme Court. We were asked for information and advice on the subject. My understanding is that the rule adopted was based upon the principles laid down by us, and that they are following the practice of counting those cars against the distributive shares of the mines.

The CHAIRMAN. You would be in favor of legislation of that kind being incorporated in any bill, so as to make it a statutory matter and not really a matter of regulation?

Mr. CLARK. I can see no objection to it, although I do not see any crying necessity for it now, because I think that rule is almost, if not entirely, universal.

The CHAIRMAN. The idea expressed by the representative of the coal association was that when Federal control ended there might be a recurrence to the old practice.

Mr. CLARK. Well, I think that is the sound rule, and I think it is the right rule. It has stood the test of adjudication at the hands of our commission and at the hands of the Supreme Court of the United States. So I can not see any possible objection to carrying it into the statute.

In a recent decision of the Supreme Court of the United States it was held that under the commerce act the commission does not have the authority to order a common carrier to supply itself with certain cars. The pending bill gives the commission such authority.

The same section makes it the duty of every common carrier, or railroad, "to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine." During Federal control such a rule has been followed by the Director General and the committee follows the decisions of the Interstate Commerce Commission and the present practice and has put in form of law what had been enunciated as proper practice. (Report No. 456, page 17, 66th Cong., 1st sess.)

Paragraph (12) of the amended section incorporates in the statute a rule laid down by the Commission and upheld by the Supreme Court as to just and reasonable distribution of coal cars among the mines, thus avoiding any possibility of the recurrence of the evil of what is known as "assigned cars." (Report No. 456, page 27, 66th Cong., 1st sess.)

The only rule which had been laid down by the commission as to just and reasonable distribution of coal cars among the mines and upheld by the Supreme Court was that stated in the *Traer* and *Hocking Valley cases*, sustained in the *Illinois Central* and *Alton cases*, *supra*.

The Senate bill, which contained the amendments suggested by the protestant association, and the House bill which had not incorporated the amendments that association had suggested, went to conference. The conferees adopted the provisions of the House bill in this respect.

It is claimed that the chairman of the House committee and the chairman of this commission were "obviously at cross purposes" in their discussion, and that the chairman of the commission was in error in his understanding that the rule adopted by the director general's staff was based upon the principles laid down by the commission. Our chairman, however, was warranted in his statement by the provisions of Circular CS-31, Revised, already quoted, although the designation of cars to be assigned was made by the car-service section of the United States Railroad Administration, instead of by the particular carrier as previous to Federal control. This minor distinction in nowise impairs the general accuracy of the statement made by our chairman.

The words used in the second sentence of paragraph (12) "to count each and every car furnished to or used by any such mine for transportation of coal against the mine" were not new in this connection, but substantially the same words had been used in the

Hocking Valley, *Traer*, and *Hillsdale cases*, *supra*, and in *Royal Coal & Coke Co.* v. *S. Ry. Co.*, 13 I. C. C., 440, 449, and in some of the court decisions. In none of those cases was it found necessary to give the words quoted the meaning of equivalency to pro rata distribution, or as inconsistent with the practice which followed our decisions in those cases. In fact, in the *Hillsdale case*, we held that "all such (assigned) cars must be counted against the distributive share of the mine receiving them" (19 I. C. C., 364), and virtually substantial language was employed in the mandatory clauses of our order in that case. The words also had a widespread usage in railroad and traffic circles at the time of the enactment of the transportation act, and that usage was consistent with that expressed by us in our report to the Senate, *supra*. While, in the expression of the rule which originated in the *Hocking Valley* and *Traer cases*, the words "count against the mine" were continually being applied as a necessary term in the formula, it was always recognized that the rule with these words in it was not the equivalent of a requirement for equal proportionate distribution of cars assigned and unassigned, to coal mines. With this usage Congress was no doubt familiar, as we are.

The question here presented has been passed upon by the Federal courts in three cases. In *Corona Coal Co.* v. *Southern Ry. Co.*, 266 Fed., 726, and in *Cleveland & Western Coal Co.* v. *B. & O. R. Co.*, 283 Fed., 995, the District Courts of the United States for the Northern District of Alabama and Northern District of Ohio, respectively, expressed the opinion that the intent of Congress was to put into statutory form the rule theretofore expressed in the *Hocking Valley* and *Traer cases*. A contrary view was expressed by the Circuit Court of Appeals in the Fourth Circuit, in *B. & O. R. R. Co.* v. *Lambert Run Coal Company*, 267 Fed., 776, reversing on this point the District Court of the United States for the Northern District of West Virginia, which had found upon this point in consonance with the *Corona case*. But the Circuit Court of Appeals was itself reversed as having no jurisdiction in the premises. *Lambert Run Coal Co.* v. *B. & O. R. R. Co.*, 258 U. S., 377. While giving to the opinions of the Circuit Court of Appeals all the respect due to the deliberate findings of such a judicial tribunal, its determination of a question of law, made in a proceeding where no jurisdiction vested, and where the Government as a necessary party was absent, and was not heard upon the construction of the statute, can not be accorded weight as determinative of this issue.

We therefore conclude that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act.

II.

Although the rules proposed for application during future periods of car shortage may not in terms be forbidden by law, we must determine whether in fact they are just and reasonable, as required by section 1, and whether they result in undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage in any respect whatsoever, forbidden by section 3 of the act. These questions may be considered together. First we will deal with the assigned car for railroad fuel, system and foreign line. At the outset we are led to repeat that we must deal with questions of this character upon the basis of the record as now developed. The decisions previously cited have left intact these questions as they are presented to us in the light of present-day facts.

Certain premises meet general acceptance in this record. It is recognized that the importance of the railroads in the distribution of coal and other commodities, and their general dependence upon bituminous coal in producing transportation, require that in some lawful way they may be assured of a steady supply of suitable coal. It is likewise generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires. There is no dissent from the proposition that confiscation of fuel coal by railroads is a practice to be avoided. It seems to be generally accepted that the public interest requires that the carriers shall not be subjected to unreasonable prices. Obviously the carrier should not be permitted to take advantage of a means provided by the public to insure an uninterrupted movement of traffic, as a means to coerce an unreasonably low price for fuel.

There is enough bituminous coal in the ground in this country to more than supply the demands of all consumers for a long period. There are more than enough miners to produce coal for all purposes. There are more mines than is consistent with the most efficient use of equipment, and their aggregate capacity exceeds greatly the country's demand. The demands for coal are seasonal, and as a result we have frequent seasonal or local car shortages. In 1916, when we began to feel the effect of the war in Europe, we experienced widespread car shortages, resulting in an investigation by us on our own motion, *Car Supply Investigation*, 42 I. C. C., 657. The more recent general coal-car shortages and the steps taken to insure to carriers their fuel needs have already been adverted to. The aggregate time lost because of car shortages, local and general, is a considerable proportion of the whole of any recent elapsed period of time. And

during each period of car shortage the practical problem of supplying the railroads with fuel has been presented sharply, and the meeting of the problem has been most troublesome, and has necessarily involved considerable general disturbance of production and transportation. The large proportionate demand for bituminous coal made by the railroads—nearly 28 per cent of the total consumed and exported by the United States annually—adds to the difficulty of the situation.

The means employed by the railroads in securing coal for fuel purposes vary widely. Some carriers own mines from which they secure a large portion of their requirements; others contract for the entire output of certain mines for a definite period of time; and still others contract for a partial output on a day-to-day basis. Some secure their coal supply by the use of the assigned cars under the rules in the *Hocking Valley* and *Traer cases*, and others secure their fuel without assigned cars. According to the record, on October 1, 1922, the following Class I carriers and bituminous coal loading railroads not included in Class I were securing their fuel supply without the use of assigned cars:

Arizona & Eastern
Atchison, Topeka & Santa Fe
Atlanta, Birmingham & Atlantic
Atlantic Coast Line
Beverly & Southern
Boston & Albany *
Buffalo, Rochester & Pittsburgh *
Carolina, Clinchfield & Ohio *
Cambria & Indiana
Charleston & Western Carolina
Chicago & Illinois Midland
Cincinnati, Indianapolis & Western *
Chicago & North Western
Chicago, St. Paul, Minneapolis & Omaha
Colorado Northern
Cumberland
Delaware, Lackawanna & Western *
Duluth, Missabe & Northern
Detroit & Mackinac
Duluth, South Shore & Atlantic
Elgin, Joliet & Eastern *
El Paso & Southwestern
Fort Dodge, Des Moines & Southern
Georgia & Florida *
Great Northern
Green Bay & Western
Huntingdon & Broad Top Mountain
Lake Erie, Franklin & Clarion
Lehigh & Hudson River
Louisiana Railway & Navigation
Lehigh & New England *
Lehigh Valley *
Litchfield & Madison
Maine Central
Minneapolis & St. Louis
Mississippi Central
Mobile & Ohio
Monongahela *
Montour
New York, Ontario & Western
Pittsburg, Shawmut & Northern
Richmond, Fredericksburg & Potomac *
St. Louis-San Francisco
Staten Island Rapid Transit
Seaboard Air Line
Tennessee Central
Toledo, Peoria & Western
Union Pacific
Union
Utah
Western Maryland *
Montana, Wyoming & Southern

The carriers indicated by an asterisk employed assigned cars in securing their fuel during the 1920 shortage.

Certain of these carriers, notably the Union Pacific, Great Northern, Chicago & North Western, Minneapolis & St. Louis, and Atchison, Topeka & Santa Fe, own mines from which they secure a considerable portion of their fuel. It will be helpful to state briefly as illustrative the practices of certain of the larger carriers which employ assigned cars in securing their fuel, and the justification they present.

The Illinois Central secured by means of assigned cars from 60 to 75 per cent of its fuel requirements from the Madison Coal Corporation, of which it owns all of the stock. This coal corporation owns eight mines in Southern Illinois on the St. Louis division of the Illinois Central, and does not engage in commercial business. The balance of the carrier's fuel is secured by seasonal contracts of 30 days, or as needed during periods of car surplus. The president of the railroad company testified that the assigned cars were essential for the following reasons. (1) They gave the carriers a regular and certain supply of coal in times of car shortage. (2) The coals from different fields are not of the same grade, which requires that certain adjustments be made in the locomotives. The Alabama coal is a different grade from that mined in southern Illinois, and again, the coal in different counties in Illinois has different burning qualities. (3) Unless the carriers can contract for a regular and suitable supply of coal, resort to confiscation becomes necessary. (4) Going into the spot market would increase the price of coal, not only to the carrier but to the consuming public as well. This carrier burns about 5,000,000 tons of coal per year, or from 250 to 320 carloads per day, and usually has on hand about 20 days' supply. During the winter it undertakes to store from 30 to 45 days' supply.

The Chicago Great Western owns a mine on the lines of the Illinois Central, and has provided itself with hopper bottom cars which are assigned to the mines to take care of its fuel needs. This road has facilities for unloading the cars into receptacles that elevate the coal for direct delivery to the engines.

The Pere Marquette consumes approximately 900,000 tons of coal per year, or from 45 to 60 carloads per day, secured largely from mines in eastern Ohio, Kentucky, West Virginia, and Pennsylvania. It solicits bids from about 500 coal producers. These bids are all on a standard specification, and contracts are made with a few operators whose offer is most advantageous, considering quality as well as price. Some three or four years ago it purchased 1,000 all-steel hopper-bottom self-clearing coal cars expressly to take care of its fuel requirements. It has installed modern fuel stations at all the large terminals to enable the economic use of self-dumping

cars and avoid the necessary expense of shoveling the coal. The coal is dumped into either an elevated trestle or a hopper. During the summer months it stores about 100,000 tons, or about one month's supply, to take care of its needs during the extreme winter weather. In 1921, it stored about 130,000 tons, or six weeks' supply. It estimates the cost of storing and picking up the coal at 70 cents per ton.

The position of the New England carriers is practically the same. They have no sources of fuel on their own rails, and are dependent upon mines in Pennsylvania and West Virginia located on the lines of other carriers. The New England carriers normally consume about 6,000,000 tons of coal per year. During the year 1920, due to abnormal market and transportation conditions, the New York, New Haven & Hartford bought large amounts of spot coal at high prices. Its fuel that year cost $45,700,000, equivalent to approximately 28.1 per cent of the transportation costs. In 1921, its fuel bill amounted to $33,500,000, or approximately 25.7 per cent of transportation costs. The New Haven customarily covers its requirements by contracts for the coal year. Its contracts are based on quality, prospects for regularity in supply, and price. The New England carriers have found it necessary to lay in a seasonal supply of fuel for protection against irregularity in mine loading as well as slowing up of transportation. They have facilities for seasonal storage of an aggregate capacity of 1,200,000 tons. The usual seasonal storage is approximately 800,000 tons, or 13 per cent of their normal requirements. They have extensive facilities for seasonal storage, including yards with parallel tracks for ground storage, similar yards with trestles for dumping, bins and overhead movable cranes, facilities in connection with tidewater discharge plants and, where the winter is more severe, large covered bins. The cost of storage is estimated at from 50 to 60 cents per ton.

About 55 per cent of the New Haven's coal is delivered direct to locomotive tenders through mechanical coaling stations at the more important terminals, which have storage capacity for several days. About 28 per cent is delivered by locomotive cranes at the less important terminals. The remainder, 17 per cent, is delivered through outlying points where locomotives lay out and where consumption does not justify either facility. The coaling points on the New Haven average one to every 29 miles, and on the Boston & Maine one to every 37 miles. These different conditions of unloading compel the movement of the proper type of car to each destination.

The assigned car, the New Haven claims, enables it to secure a uniform quality and grade suitable for its requirements and favorable to good service; permits the placing of contracts for yearly

consumption at reasonable prices; requires the use of a minimum number of cars on consuming line in its fuel service, results in an increase in the number of cars available for commercial loading; reduces unloading costs, as the unloading facilities and types of cars are each adapted to the other; affords a greater opportunity for solid train movement of empties and loads; and affords a better standard of maintenance and equipment on account of system cars being more regularly at home. The New Haven claims that a railroad attempting to procure its fuel supply without the use of assigned cars is under serious disadvantages, which we will summarize. Overcontracting for fuel is required to safeguard against irregular supply; an excessive supply of coaling cars must be held with resulting heavy increase in per diem to consuming road; excessive switching costs to both originating and consuming lines are incurred in selecting proper types of equipment for railroad fuel; the unloading costs on the consuming line are excessive on account of different types of cars; greater unloading storage must be provided to meet seasonal requirements entailing high handling costs; and the purchase of spot coal at higher prices or the confiscation of commercial coal or fuel coal consigned to another carrier is inevitable.

The New England carriers do not use assigned cars to secure their entire fuel-coal supply. Seemingly, in the absence of an order from us specifically authorizing the practice, they secure their fuel supply without assigned cars. Some of their coal moves by way of tidewater, and assigned cars are not placed at the mines for the loading of such coal.

The Baltimore & Ohio consumes from six to seven million tons of coal annually. During the four years preceding 1922 the coal consumed averaged 17 per cent of the total production on its line. It contracts for its fuel supply with 44 operators, covering the entire output of 56 mines with an estimated daily tonnage of 23,438 tons. The large majority of these mines are located on the heaviest coal-producing divisions of the road. Approximately 14 per cent of the coal consumed is delivered direct into the tenders of the engines. There are 17 divisions, with an average of five coaling stations to a division. The carrier owns 635 stoker-fired engines, 442 of which require a specially prepared coal, otherwise two firemen are necessary. A plan has been worked out through the use of the assigned car whereby coal produced in a certain territory will go to the same divisions continuously, and this, it is urged, results in increased efficiency. Any change in the assignment of coal lowers the efficiency of the motive power. With the assigned car the Baltimore & Ohio used an average of about two grades of coal on a division. During the strike period in 1922 it was necessary to use about 18 to

20 different grades, and the performance of the motive power was unsatisfactory. Several hundred thousand tons were stored when the car supply permitted without interference with or affecting the commercial distribution. The Baltimore & Ohio would encourage the storing of coal if the car supply is strong enough.

The Chesapeake & Ohio consumes about 2,500,000 tons of coal annually, of which approximately 300,000 tons are loaded direct on the engine tenders and 2,200,000 tons on cars. This carrier owns mines which supply 700,000 tons, and 1,500,000 tons are obtained under three-year contracts from seven different mines. High-volatile steam coal is used practically exclusively. Coal elevators of modern type are maintained at various locomotive terminals. No coal is stored, other than the small storage capacity of the bins and coal elevators, the largest of which is 300 tons. The carrier estimates that 1,400 out of a total of 42,000 coal cars owned will be constantly required for securing its fuel, although prompt dumping reduces the number of cars held daily to approximately 1,200. Contracts are confined to a few mines which produce coal efficient for engine purposes. It is contended that if the contracts were spread over a number of mines an unduly large number of cars would be required to handle the fuel contracted for; the cost of assembling would be excessive; it would interfere with transportation functions; the responsibility for filling the requirements would be divided among too many people; and it would be practically impossible for the carrier to make an inspection of the coal.

There are no mines on the Grand Trunk from which it can obtain fuel, and it is dependent upon coal produced in the United States. To insure a supply of proper grade the Grand Trunk purchased 5,456 hopper-bottom self-clearing cars at a cost of $4,320,000. With the exception of 350 or 400, these are used largely for transporting its coal. Its requirements approximate 7,000 tons daily, or a little over 2,500,000 tons annually. The coal is obtained largely from its own three mines near Bellaire, Ohio, one on the Baltimore & Ohio and two on the Pennsylvania. About 10 to 15 per cent of its supply is secured from mines in Nova Scotia, which is used at Montreal and points east. It has a contract with a mine on the Illinois Central in Illinois, and furnishes about 25 to 30 cars a day to the Illinois Central at Chicago for delivery at that mine. It has short-term contracts with other mines on the Buffalo, Rochester & Pittsburgh; Buffalo & Susquehanna; and Pittsburg, Shawmut & Northern. Some of this coal is of poor quality, and equipment is not assigned for the loading thereof except to one mine on the Buffalo, Rochester & Pittsburgh, with which a yearly contract is made. It generally stores about 450,000 to 600,000 tons, about 90 days' supply,

to guard against any slow-up in transportation caused by storm or congestion. The position of the Grand Trunk is similar to that of other lines, that if it could not assign cars for its fuel it would be forced into the open market to purchase coal at an increased price, with no assurance of a steady movement of the supply.

The Chicago, Burlington & Quincy owns a mine in the southern Illinois district with a production of 4,200 to 4,500 tons per day. It consumes, on an average, about 13,500 tons per day. It contracts with other mines for the remainder of its coal. During slack periods, or when requirements are less, its own mine is closed down because the contract mines meet its requirements. It makes a general practice of storing a limited quantity, but regards it as uneconomical to store more than a reasonable amount. The estimated handling cost is about 25 cents per ton.

There is only one small mine on the Seaboard Air Line, and it obtains its coal from mines on other lines. It consumes about 103,000 tons monthly, about 40 per cent of which is obtained from mines in West Virginia-Virginia territory on the Norfolk & Western, Interstate, and Southern Railways, and 60 per cent from Alabama mines on the Frisco and Birmingham Belt. Its requirements are secured through part-output contracts made early in the spring for the year's supply beginning July 1. Since Federal control the greater portion of its coal has been secured without the use of assigned cars. Prior to Federal control it was the practice to assign coal cars to protect at least 75 per cent and at times 100 per cent of its requirements. It maintains seven operating divisions, with 23 major coaling stations, in addition to 45 smaller stations. Storage is provided at five points for approximately 100,000 tons, or one month's supply. The coal is either dumped directly on the ground or from a trestle.

The Southern under normal conditions obtains its supply under contracts covering the entire output from mines on its line in Virginia, Tennessee, Kentucky, Alabama, Indiana, and Illinois. It occasionally purchases coal for the Washington division from mines in West Virginia on the Chesapeake & Ohio and Baltimore & Ohio. It estimates its requirements for the year ending January 30, 1923, as 5,871,522 tons. It endeavors to keep on hand a supply for about 20 days.

Some of the important carriers which use the assigned car for railway fuel at mines on their own lines have not presented any statement of the reasons which have impelled them to adopt or maintain the practice. Among such carriers may be mentioned the Pennsylvania, New York Central, and Louisville & Nashville. Many of

the important carriers which supply cars to coal-loading railways for assignment to mines located thereon have not submitted any statement as to their particular situations.

The position of the opponents of the assigned car for railway fuel may briefly be summarized as follows: (1) The practice reduces the car supply at commercial mines on certain divisions, since the assigned cars are taken into account in determining the number of cars to which each division as a whole is entitled; (2) it results in a wastage of cars, because a mine loading assigned cars usually has more cars standing over than a mine loading commercial coal; (3) it produces great and harmful inequalities in working time in nearby competing mines; and (4) it affects the price of the coal purchased by the carriers injuriously to the mine operators, and that it results in the shipper buying transportation preference with coal, and the carrier buying coal with transportation preference. These contentions will be dealt with separately.

The effect of the use of the assigned car for railway fuel is to diminish to some extent the supply of cars placed at commercial mines during periods of car shortage. The extent to which the practice causes a diminution in supply is in dispute; the mine operators opposing the practice consider it a serious matter, both because of its direct effect in limiting production, and because of the indirect effects upon their costs and labor supply, while the carriers minimize the result and even claim compensating advantages to the commercial mines because of the practice. Because of wide differences in the practices of the railroads, and the many fluctuations due to changes in car supply, public clamor for coal, or service orders of the commission, it is extremely difficult to state in precise terms as to a division of a particular line what would have been the effect on the distribution of cars to commercial mines had no cars been assigned; and it is even more difficult to express in any arithmetical manner the result as to the carriers generally. There is much in the record on this subject, which must be weighed in the view of countervailing considerations. The estimates based on individual judgment in some instances indicate the increase in the commercial distribution would have been almost 40 per cent, at the height of the car shortage of 1922. Other testimony indicates a difference of from 10 to 30 per cent. Evidently the private assigned car figures in these estimates, as well as the railway fuel cars. The last column of the following table indicates the increased supply which commercial mines in the various districts on the Chesapeake & Ohio Railway would have received during the year 1920, if there had been a pro rata distribution of all cars, i. e., commercial, system fuel, foreign fuel, and private.

	New River district.	Kanawha district.	Coal River district.	Logan district.	Kentucky district.	Total.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
Unassigned cars placed, per cent of aggregate orders	50.4	50.9	51.5	51.9	50.1	51.1
Per cent of aggregate orders if all cars prorated	56.7	56.6	55.9	55.8	54.4	56.0
Increase in cars placed, if all prorated, per cent of aggregate orders	6.3	5.7	4.4	3.9	4.3	4.9

In times of shortage, with a strong demand for coal, the orders may be taken as approximating the mine ratings. The percentages now to be quoted are in terms of the aggregate orders. During this same period, on an order for 26,429.1 cars, 25,509.7 cars were assigned for development of new mines, or under service order No. 9 of this commission. If these assignments had not been made, the percentage of unassigned cars placed would have increased from 51.1 to 52.3 of the orders. If the assignment for railway-fuel and private cars had been abolished, and those cars prorated, the percentage would have further increased to 56. Without private-car assignments, had the private cars remained off the line, the percentage would have decreased from 51.1 to 48.5. If no assignments for railway fuel or of private cars had been made, the former class of cars being prorated to all mines and the latter being no longer on the line, the percentage would have decreased from 51.1 to 50.1. If the assignment for railway fuel had been abolished and the railway-fuel cars prorated to all mines, the percentage would have increased from 51.1 to 52.7.

The weakness of such a showing is that the orders by mines in times of shortage, taken as the base to which each of the percentages stated apply, which approximate the mine ratings, are notoriously far greater than the normal mine capacities, or the ability of the carrier to transport, or the country to consume bituminous coal, when taken in the aggregate. The ratings are merely the factors to be used in determining the relative car supply each mine is to receive, in times of shortage, whether the supply be 10 per cent or 90 per cent of the ratings. More significant would be a comparison of the number of cars which would be placed if all assigned cars were added to those distributed with the number in fact apportioned among the commercial mines. If the second line of percentages shown in the table above be compared with the first line, it will appear that the result of prorating the assigned cars (including private cars as well as those for railroad fuel) with the unassigned would have been to increase the supply of the commercial mines

over the cars actually furnished by the following percentages of the cars in fact set:

New River district	12.5 per cent.
Kanawha district	11.2 per cent.
Coal River district	8.5 per cent.
Logan district	7.5 per cent.
Kentucky district	8.6 per cent.
Total	9.6 per cent.

In considering these averages it is to be remembered that the figures cover a calendar year, during a part of which there was no car shortage. As previously explained, cars for railroad fuel were assigned by order of the United States Railroad Administration during Federal control; from March 1 to April 15, when our notice to carriers and shippers became effective, the effective car-service rules made no provision for the assignment of railroad fuel cars. If confined to a period of time during which a car shortage prevailed, and during which the assigned-car practice was applied throughout, the percentage of increase in the supply to the commercial mines which would result from the abolition of the assigned-car practice would be greater than shown in the last preceding table. Further, as the statement covers entire fields, aggregated into single sets of comparative figures, the effect on different individuals doubtless varied. With some, the result of the change in method of apportionment of the assigned cars might be inconsiderable, but of greater importance to others than the mere statement of percentages might imply. The mines which receive a full car supply through the assignment practice are few in number as compared with the commercial mines, and the latter operate at but a fraction of their capacity. Therefore the disparity in treatment between individuals is far greater than is indicated by the process of recasting the supply in the manner indicated. The prorating of all cars equally would decrease the supply given the few mines much more in proportion than it would increase the supply of the remainder. But, if a preference exists, the fact that few receive it and that its abolition would not intrinsically greatly increase the benefits to the unfavored great majority of shippers, can not be urged as a justification.

A compilation based upon estimates made by the Baltimore & Ohio for four successive Thursdays in October, 1922, is to the effect that the commercial supply would have been increased by the fol-

lowing percentages of the cars placed at commercial mines, if system fuel cars had been distributed ratably with unassigned cars.[6]

Division.	Oct. 5, 1922.	Oct. 12, 1922.	Oct. 19, 1922.	Oct. 26, 1922.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
Monongah	33.9	11.1	27.1	63.9
Connellsville	6.8	2.8	8.0	8.4
Wheeling	72.9	3.2	44.9	49.7
Cumberland	2.7	−1.4	−1.3	2.4
Pittsburgh	3.1	48.1	2.8	20.3
Charleston	5.9	3.4	13.8	7.5
St. Louis	3.0	18.6	12.9	3.4

No changes would have been made in the distribution in the Ohio River, Ohio, Toledo, Akron, and Newark divisions, as seemingly no cars were assigned in those divisions.

Evidence of bona fide contracts for the output of the mines is required by the Baltimore & Ohio before assigned cars for foreign fuel can be sent in. Approximately 25 per cent of the total cars loaded on the Baltimore & Ohio are assigned cars. On Mondays in October, 1922, had assigned cars for Baltimore & Ohio fuel been eliminated the distribution to commercial mines would have been increased to any extent on four divisions only. The increases on the system as a whole ranged from 3.23 per cent to 4.6 per cent of the mine ratings. Assuming that the average tipple mine has a rating of 10 cars per day, and that the available cars had been equally distributed, the result would have been a daily increase in the car supply at the commercial mine of approximately 0.4 car, or about 10 cars a month. The weight to be given this showing is discounted by reason of the fact that Monday is practically always the day of best car supply on any carrier during times of shortage, and the day on which the effect of the assigned car upon the commercial mine would be at the minimum. But, in view of the inability of the commercial mine operator in such times to meet the demands for coal, the diversion of an average of a fraction of a car daily is not to be waived aside because it may seem inconsiderable as compared with an average rating of 10 cars, assumed for the illustration. In fact, with but a 40 per cent car supply, the operator in the case assumed would receive but four cars a day on an average, and an increase of four-tenths of one car would be equivalent to increasing

[6] The reduction in car supply for the Cumberland division October 12 and 19 which would result if all cars had been pooled, is thus accounted for: The adjusted mine rating for assigned cars slightly exceeded the adjusted mine rating for unassigned cars. On the dates mentioned no assigned cars were placed on the Cumberland division. Dividing the number of cars placed, which were all on the unassigned basis, by the greater divisor gives a smaller number of cars as due the commercial mines, and brings about a nominal reduction in the cars to be allotted to them. The same method of computation was employed as to the other divisions shown.

the car supply he receives 10 per cent, and would permit him to increase his output and supply one-tenth more coal to his customers.

If a foreign carrier were not permitted to assign its own cars to a coal-loading carrier, the latter would be under the primary duty of supplying cars at the mines. There would follow a reduction in the supply available for the commercial mines, because of the necessity for spreading the cars that were at hand over a wider field, unless the foreign carriers were compelled to participate in furnishing coal cars for the service. For that reason the carriers claim that such cars are a distinct advantage to the commercial operator. Whether this would ultimately be the fact must depend upon the determination of the duty of the participants in the through movement to supply appropriate shares of equipment necessary for the transportation. Without passing on the question whether the duty rests upon the carriers jointly (compare *Huerfano Coal Co.* v. *C. & S. E. R. R. Co.*, 28 I. C. C., 502) or severally, in the aggregate the duty of providing an adequate supply of equipment rests upon the railroad carriers.

When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. *Rates on Railroad Fuel and Other Coal*, 36 I. C. C., 1, 9; *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C., 265.

There is evidence which indicates that the assignment of cars for foreign-line fuel coal to a certain extent dislocates the car supply of the coal-loading line to the injury of the operator shipping commercial coal, because of the frequent disregard of the requirement that cars of one line sent to another line for fuel must be placed at the mines to which they are carded. Some coal-loading roads place such foreign-line fuel cars at the mines nearest the junction point at which received, and then place system cars at the mines which are to ship coal to the foreign line. This usually occurs when the home line is congested. The result is a material lessening of the already short car supply of the home line, as the car-service rules require that the foreign-line cars must be loaded to or in the home direction, and an equal number of system cars go to the foreign line with its fuel. Assigned foreign-line fuel cars sometimes replace an equal number of commercial cars which would otherwise be subject to pro rata distribution. The coal-loading road equalizes its car supply among divisions, and in doing so takes into account the foreign-line fuel cars. This is detrimental to the commercial operators, since it reduces the number of cars to which they would otherwise be entitled.

The record indicates that upon the whole the wastage during periods of shortage, which results from cars set not being loaded on that day but held over, is somewhat greater at mines which use the railroad or private assigned car than at commercial mines. A scanty or irregular supply of cars to the commercial mine makes for sporadic production, while the mine with the assigned cars flowing more steadily and closer to capacity is better able to utilize with promptness the equipment received. If the commercial mine has cars left over, unloaded, they are charged as against the subsequent supply, and the commercial operator goes to every length to avoid this in times of shortage, when the price obtainable for his product is usually the highest. The assigned-car mine is under less disability in this regard, and is not subject to the same penalty, because its failure to load promptly does not decrease its future supply of assigned cars. While the difference in percentage between the two classes is not great, evidently in the aggregate some thousands of cars are involved daily in periods of shortage.

All interests represented take the position that the bituminous coal-mining industry is greatly overdeveloped, and that there is a surplus of labor available for such mines. In times of plentiful car supply, or when the demand for bituminous coal is low, many small or weak mines, which are the least economical to operate, are forced to close. Car shortages are usually accompanied by a condition of alarm on the part of the consuming public, and a demand for the coal which becomes more excited as the coal-car supply lessens. This encourages the opening of the smaller and weaker mines with the recurrence of a poor car supply, and the paradox is presented that as the car supply becomes worse, the capacity of the open mines increases at even a greater rate. This makes more difficult the process of distribution as the cars in service can not be handled as efficiently, nor can as much coal be transported in the aggregate as if fewer mines were demanding service. The increase in demand and mine rating must be met by a pro rata distribution of the available cars, and thus the supply, already diminished because of the lesser efficiency possible in movement, is further diluted in the process of ratable distribution according to the enlarged capacity. The consequence is that in times of car shortage the commercial operators are in the keenest competition for cars. There is also a competition in the demand for cars as between users of coal. The service orders which we issued in 1920 and 1922 were based upon the insufficiency of the existing supply to meet all needs. Industries which were less vital to the public welfare, but better enabled to pass along their fuel costs, were able to bid up the price of coal for all users, and thus attracted an undue proportion from

the more essential uses, to the detriment of the convenience of the public and the commerce of the people. A shortened car supply at commercial mines, from whatever cause, tends in this direction.

Respondents have interpreted our decisions as permitting the assignment of cars on a day-to-day basis. Thus, on a given day a mine with a rated capacity of 20 cars loads railroad fuel, and receives 20 assigned cars, while another mine with the same rated capacity loading commercial coal is supplied but a percentage of its rating. The next day both mines load commercial coal, and are given the same number of cars. The mine loading railroad fuel on the one day has thus received more cars in the aggregate than the mine of equal rated capacity which has shipped only commercial coal. A strict construction of our decisions shows that we did not prohibit the assignment of cars for railroad fuel in excess of the percentage of cars available for commercial loading when the output of a mine was taken for only brief or intermittent periods. No time limit was imposed by us. After we issued our notice to carriers and shippers, dated April 15, 1920, and railroad fuel cars were considered as assigned cars, the possibilities of the practice were carried to the extreme in some instances and such cars were given to a mine for its entire output for a day or for certain days, and the mine was treated as on a commercial basis for succeeding or intervening days. This was an intermingling of the two ideas of taking a part of the output of the mine and counting against it the cars assigned to it for railroad fuel, and the other provision for taking the entire output of the mine. We found it necessary to exercise our emergency powers under paragraph (15) of section 1 to restrict the practice, and to make it clear that the brief or intermittent use of a mine for railway-fuel supply would not warrant the application of the assigned-car privilege. As previously stated, service order No. 18, since vacated, prohibited the assignment of cars and failure to count them against the distributive share of the mine for the day, or assigning cars in excess of the mine's distributive share for the day, except where the entire output of the mine was taken for a period of not less than six consecutive months. After the cancellation of that order certain carriers again resorted to the former practice of assigning cars for the entire output of a mine or mines for a day or for certain days, and distributing cars to that mine on the other days for commercial loading, and now follow that practice. In the rules proposed the respondents do not recommend that the application of the assigned-car privilege should be limited by a requirement that the railroad shall make term contracts for the entire output of the mines at which the assigned

rs are to be placed. It is conceded that all such requirements re not so covered, and it is claimed that they can not be, and some eway must exist within which the railroads may apply the assigned-ar rule.

The opponents of the assigned car also object to the limitation of he use of the assigned car to output contracts for periods of six nonths or more, but on different grounds they contend that such limi-ation would not eliminate the evils produced by the practice, but would bring about additional evils. An operator owning only one nine would have to elect between a complete severance of all commer-ial connections and a complete renunciation of the assigned cars. His ompetitor who operates more than one mine and who is in position o continue in both kinds of business would be under no such dis-bility. Under service order No. 18, we permitted the operator who wned a number of mines and had contracted with a carrier or car-iers for the total output of one mine to assign cars at some one of the nines of the operators in the same district on different days. This, it s contended, subjects the single-mine competitor to all of the disad-vantages of both the output-contract system and the partial-output ystem. The large operator with a number of mines, if required to onfine assigned cars to the mine having an entire-output contract would probably experience labor trouble at his other mines shipping ommercial coal.

Numerous operators specialize in domestic coal, and have prepared themselves for its production by the installation of proper machinery. This class of operators is essential to the supply of the domestic coal of the country. During the domestic-coal season they sell the prepared sizes for domestic consumption and the screenings for other purposes. At the close of the domestic season they can not put their prepared sizes on the railroad-fuel market under the six months' contract rule, because they can not afford to enter into such a contract, and could not dispose of the screenings if they did so. The operators would thus be left with screenings which they had no way of shipping, un-less given commercial cars or assigned cars for this purpose, either of which would violate the rule. The output-contract rule also in-volves difficulties because some roads purchase nothing but prepared sizes of screened coal, while others purchase run-of-mine coal and screen and crush it themselves, using the prepared sizes for locomo-tive fuel and for the heating of buildings and the screenings in their shops.

It is the practice of certain coal-loading carriers to charge cars delivered to them by another railroad for the loading of the latter's fuel, both as assigned cars and as cars delivered under interchange arrangements. This gives the delivering line the benefit of the

assigned-car rule, and also credit for delivery of equipment to the coal-loading road of the same cars. As the coal-loading carriers commonly ship a large amount of the bituminous coal they produce to points upon the lines of connecting carriers, the proper balance of interchanged cars is highly important in conserving the car supply of the originating line. The practice mentioned tends to diminish that supply, and thus decrease the available cars for commercial coal loading. We do not regard the practice as proper.

Much of the voluminous record has dealt with the practical effect of the operation of the assigned-car practice upon mine labor. The evidence is conflicting in many respects, and it does not seem necessary to state it other than generally. The mine operators are not unanimous in their opinions that the result of the assigned-car practice has been detrimental to their industry; but the great majority of the mine operators, and all the representatives of mine labor who appeared are firmly of that conviction. Out of the mass of conflicting testimony it may be conservatively stated as established that the general effect of the assigned-car practice is to attract as many desirable miners as can be given employment to the assigned-car mine, and away from commercial mines, and particularly so in the unionized fields. The commercial mine has a more rapid labor turnover than the mine operating with assigned cars. Often these two classes of mines are located close to each other, and the miners paid upon a quantity basis in the commercial mines are rendered discontented when they are compelled to remain idle a large part of the time because of car shortage, while neighboring mines with assigned cars are operating on substantially a full-time basis. This is one factor which has contributed to the unsettled labor conditions in the bituminous mining industry during recent years, and has been urged as a reason in support of the maintenance of existing wage scales or for still higher rates of mine pay. Without attempting to equalize the fortune, opportunities, or abilities of all the bituminous-mine operations or their mine laborers, it seems appropriate to consider this effect of the practice under consideration.

The result of the inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production. As it is the commercial supply of bituminous coal which is restricted by the free use of the assigned car, the increased costs are most sharply felt in coal intended for commercial consumption. It appears of record that during the late war, with the elimination of assigned cars the fuel administration simultaneously lowered the price fixed on all coal 10 cents a ton. The increase in cost because of inequality in running time is largely due to the fact that many of

the expenses of the mines are constant; some are reduced but not eliminated by idle time, and the amount of the expenditures eliminated by idle time is proportionately small. The relation between the car supply and these costs is immediate. The weight of the evidence is that mine production costs rise because of a diminished car supply, but at a sharper rate. Without attempting to reconcile the conflicting testimony as to the amount of such increased cost, we may safely conclude that it is considerable and important, both to the mine operator and to the consuming public. In weighing the benefits the railroads derive from the assigned car, this indirect cost to the coal-consuming public must be given proper value.

The protestants contended that in return for the preference in car supply given to mines loading railroad fuel the carrier is able to secure its fuel coal at a lower cost than would be the case if the cars were distributed on a pro rata basis. The record does not support the statement more often made to us outside this record than in it that the railroads deliberately and directly use the assigned-car privilege as a means of coercing unreasonably low prices for fuel.

Mine operators prefer to have the assurance that cars will be furnished for railroad fuel coal, and a promise of this character is one of the factors which influences the making of the contract. If the operators do not have this assurance, there would be a higher price. Without doubt in many cases the assurance of a full car supply tends to bring the railroad buyer and mine-operator seller together upon a lower price basis than would otherwise be agreed upon without that factor being mentioned in the negotiations at all; in some instances the assurance of a good car supply is named or advertised as an essential consideration. For the present we need give this consideration only as it bears upon the fact previously commented upon, that the commercial-mine operator is sometimes forced out of the commercial business and is compelled by his necessities to take advantage of the assigned-car privilege and to sell his product to a different class of users at a lesser price than he otherwise would. The respondent carriers repudiate the suggestion that they seek or should be permitted to use the assigned-car privilege as a means of securing fuel coal at an unreasonably low price.

In the case of mines which a railroad carrier owns, situated upon its own rails, or where mines are operated under a long-term lease virtually the equivalent of ownership so far as duration is concerned, a somewhat different situation exists with respect to competition with commercial mines than when such mines are privately owned and either leased to carriers or covered by output contracts and operated by their private owners for periods of time such that

they may fairly be said to continue to be actual or potential competitors with commercial mines in the vicinity. The mine owned or controlled by a railroad carrier situated upon the lines of another railroad comes into competition with the commercial mine near by. The practical difficulties of determining whether a leasing arrangement is of such a character that it is removed from the competitive field are manifest. Should the privilege of assigned cars be restricted to mines of railroad ownership, the effect would be to encourage the railroads to buy mines and thus increase the present number of assigned cars, or else to induce them to open new mines of their own ownership, which would not only have the same results, but would undesirably add to the capacity of the already overdeveloped industry of bituminous-coal mining.

There has been much adduced bearing upon the ability of the carriers to secure their reasonable fuel requirements without the use of assigned cars. The operators contend that such needs can be met adequately by one or more of the following methods, without assigned cars: (1) By storing more substantial amounts of fuel coal at points of consumption during periods of inactive demand upon the part of the public, which, it is claimed, can be done without undue expense; (2) by a wider distribution of fuel contracts among producing mines; (3) by contracting that a certain proportion of the coal produced and to be shipped shall be carded for railroad use before deferred customers are supplied; and (4) by order of this commission suspending the applicable rules as to equal distribution in special cases of real emergency, under the powers conferred by paragraph (15) of section 1 of the act. The carriers doubt or deny the practicability of these suggestions. Perhaps singly none of these suggested courses would suffice, but in combination they would greatly mitigate the results which the respondents claim would follow the abolition of the assigned-car privilege. That some other course is practicable is strongly indicated by the fact that many of the great bituminous-consuming railroads have not found it necessary to assign cars to insure an adequate supply of suitable fuel. The argument from individual necessity should not be pressed too far in this regard in the absence of a showing as to a sufficient experience in operating under the practice of equal distribution.

But the railroads are not the only agencies as to which the public interest requires that there shall be a steady supply of suitable fuel at a reasonable price. There are many important activities which labor under the same necessity as the railroads, who have not enjoyed the privilege of assigned cars, save during a few months in 1920 and 1922 when specially designated in certain individual cases by our emergency service orders, or as they may have employed

private cars. Yet they have all continued to function. As illustrative, by our service order No. 23, in 1922 we classed equally with railroads other common carriers, the bunkering of ships and vessels, public utilities which directly serve the public under a franchise therefor, street and interurban railways (some of which are competitors of the steam railroads which use assigned cars), electric power and light, gas, water, and sewer works; ice plants which directly serve the public generally with ice, or supply refrigeration for human foodstuffs; hospitals; the United States, State, county, and municipal governments, and their hospitals, schools, and other public institutions. The needs of the Army and Navy are important. If the railroads are to continue supplying their fuel needs by a continuance of the assigned-car practice as proposed, there is good reason we should consider extending the same prividege to some or all of the public utilities and quasi public utilities mentioned.

The circumstances surrounding and subsequent to our decisions in the *Traer* and *Hocking Valley cases* are such that the practice based upon the rule there announced can scarcely be given the sanctity of long observance in considering the question of reasonableness or undue preference. We have already shown that the power of assignment during Federal control was lodged in the car-service section of the railroad administration. The rule was not reestablished until April 15, 1920. On October 1, 1920, service order No. 18 further limited the rule in its application, and that order, bottomed upon the emergency powers conferred upon us by paragraph 15 (a) of section 1, remained in force until March 24, 1921, when we instituted the present investigation. From 1907 to the latter part of 1918, there was no general coal-car shortage throughout the country except during the latter part of 1912. The rule announced in the *Traer* and *Hocking Valley cases* was never given nation-wide application. As the rule is unimportant to the carriers in times of car surplus, it was only during the latter part of 1912, and during the latter part of 1916 and 1917, that the carriers in the eastern part of the United States relied in a material way upon the rule in the securing of their fuel. The latter car shortage disappeared in April, 1918, and upon the recurrence of a period of shortage, the railroad administration had ordered the abolition of the practice. Shortly after Federal control was terminated, as previously stated, we assumed control of the situation during the car shortage of 1920, due to the so-called outlaw strike, and exercised our emergency powers until the complete termination of the period of shortage. Similarly, in the recent car shortage due to combined effects of strikes of the bituminous-coal miners and railway shopmen, our special service orders and directions con-

trolled the distribution of equipment for coal loading. Indeed, during the life of certain of our service orders in the shortage of 1922 we notified the carriers that the use of the assigned car was regarded as inconsistent with the letter and the spirit of the general plan of distribution which we were seeking to effectuate. From the beginning of the car shortage of 1916, at least, the operation of the rule has been bitterly contested and opposed by the majority of the commercial-mine operators, and solidly by mine labor wherever organized.

The rule evolved in the early decisions was not the fruition of ripe experience. The *Hocking Valley* decision, as we have stated, was in 1907, and the *Hillsdale case* was decided in 1910. COMMISSIONERS CLEMENTS and LANE had joined in the reports and orders in both the *Hocking Valley* and *Traer cases*. In a dissenting expression in the *Hillsdale case*, COMMISSIONER LANE, COMMISSIONER CLEMENTS concurring with him, referred to the whole question of coal-car distribution as then being in a state of flux, and that on the investigation made by the commission three years before, it was brought out and clearly established that the distribution of cars to coal mines was based largely upon interest, prejudice, and pull. *Hillsdale case*, *supra*, page 387. Subsequent to the *Hocking Valley* and *Traer* decisions and other related cases an effort was made to establish rules which would not be open to objection on the ground of discrimination, but the rules were referred to by COMMISSIONER LANE as tentative and experimental and not representing the crystallized experience of years.

III.

We may now consider use of private cars upon an assigned basis. Much of what has been said as to the practical effects of the practice of assigning railway fuel cars, system and foreign, is equally descriptive of the results of the assignment of private cars. There are certain additional matters which require consideration. In passing, we may repeat that the assignment of private cars was not prohibited by the United States Railroad Administration.

In the *Hocking Valley case* we condemned the long-existing practice of failing to charge private coal cars against the percentages in distribution of cars to coal-mining companies. In effect we held that private cars should be given to the mines to which they were consigned or assigned, but that they must be counted against the distributive share of the mines. If the number of such specially consigned or assigned cars equaled or exceeded the distributive share of a mine receiving them, it should have no additional cars, but if not equal to the distributive share, the mine should be given only

ufficient additional cars to make up its distributive share. Our olding is thus seen to have been a marked limitation upon a prac-ce in effect and was based upon the issue as to undue discrimina-on or preference.

Subsequently, in the *Hillsdale case*, *supra*, *the* majority of the ommission said that the general theory for the distribution of coal-ar equipment according to the general trend of the decisions as tated in *Logan Coal Co.* v. *P. R. R. Co.*, 154 Fed., 497, 503, "has ppealed strongly to this commission as being fair, reasonable, and ondiscriminatory." 19 I. C. C., 364. The nature of the trend was tated thus by the court in the cited case:

> The general trend of the decisions is to the effect that all cars, whether ndividual cars or owned by the railroad company, or assigned by other rail-oad companies for fuel, shall be treated as an available car equipment as a hole, distributable pro rata to shippers desiring their use along the line, upon basis giving each equal facilities with the other. [Citing cases.]

The majority insisted that the owner of private cars was entitled o their exclusive use, but held that all cars of this description must e counted against the distributive share of the mine receiving them. Notwithstanding the rule requiring pro rata distribution quoted by he majority as having appealed strongly to the commission as fair, easonable, and nondiscriminatory, the report continued:

> Although the mine owning private cars * * * is entitled to receive them ven though in excess of its ratable proportion of all available coal-car equip-nent, nevertheless the defendant will be required in the future to count all uch cars against the distributive share of the mine so receiving them.

And the majority denied the request of the complainant that the defendant be required during percentage periods to distribute all coal cars ratably among the operators according to a rating theory which we were unable to adopt.

As will appear subsequently, COMMISSIONER PROUTY dissented be-cause, in his opinion, the majority should have gone much further than it did in wiping out inequality in the treatment of the private assigned cars as compared with the distribution to the commercial mines.

In many cases we have had occasion to consider the nature of he obligations and rights of the owner of private cars and of he carrier which transports them upon its rails, with particular eference to the situation of other shippers who do not own such ars and are dependent upon the railroad for a supply of equipment. The development of the relation from the time when the railroads were simply toll lines and the shipper furnished his own car is stated n *In the Matter of Private Cars*, 50 I. C. C., 652, 656, and is well-nown history. But the carriers are no longer regarded as toll lines,

even as to the comparatively few privately owned cars of various descriptions which they transport. The Pennsylvania seemingly has some charter duties as to the transportation of privately owned cars, but such obligations can not defeat the power of Congress to compel equality of treatment of shippers in interstate commerce.

COMMISSIONER PROUTY in his dissenting expression in the *Hillsdale case*, said:

> The use of private cars is growing less, and the question will, in all probability, never be a living one. I do not, therefore, care to discuss it, but wish simply to note my position. In the matter of car distribution every car should, in my opinion, be treated as though owned by the railroad upon whose line it is in service.

There have been many cases in which we have considered the relation of the private car to the railroad as it affected the rate paid by its owner as compared with the rate paid by others. The parallel between preferences and prejudices in respect of rates is manifestly close with preferences and prejudices in respect of service; indeed, with a low-grade commodity such as coal, it often happens that an inequality with respect to car distribution, controlling, as it does, the quantity of production possible, is much more important to the shipper than the amount of the transportation charge he pays. Certain principles are clearly stated in our reports, running throughout from almost the creation of the commission to the present day. The private-car owner has no right to demand that his cars be transported over the lines of a carrier which has not consented thereto. The obligation of furnishing an adequate supply of equipment by statute rests upon the carrier, and does not rest upon the shipper. The duty can not be transferred to nor required of the shipper. The use of private cars by railroad carriers has been recognized by Congress, which has provided for the control of the use of such equipment by us, under the provisions of the interstate commerce act, by means of a mandate addressed to the carriers subject to our jurisdiction. We do not deal with the private-car owner as such. Congress has provided that if a shipper furnishes an instrumentality used in the transportation of property owned by him, the charge and allowance therefor shall be no more than is just and reasonable, and has authorized us to fix the maximum reasonable charge to be paid by the carrier for the use of the instrumentality so furnished. (Paragraph (13) of section 15; compare paragraph (14) of section 1.)

But the rule of Congress goes further. The term "car service," as defined in paragraph (10) of section 1, clearly includes the supply and movement of private cars. By paragraph (11) it is made the

duty of the respondents to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful. By paragraph (14) we are given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to the act, including the compensation to be paid for the use of any car not owned by the carrier using it.

Throughout our reports we have held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present abilitiy of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout we have recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation.

The position taken by the courts and by this commission was well summarized in the report made by the committee on car distribution and car shortage to the National Association of Railway Commissioners in the promulgation of the Uniform Demurrage Rules, in 1909.[7] The committee was composed of a representative of each State that had a railroad commission, and COMMISSIONER LANE of this commission:

> It is the carrier's duty to furnish all facilities of transportation, and it can not permit the presence of any equipment upon its line to work a discrimination as between shippers. * * *
>
> When a private car is employed by a carrier in lieu of its own equipment as an instrumentality of transportation it is thenceforth not a private car, but a railroad car; it does not regain its status as a private car until, after the transportation is concluded, it leaves the carrier's service. * * *
>
> The contract under which the car enters the carrier's service is a thing altogether apart from the carrier's undertaking to transport the owner's freight. In the one case the car owner by supplying the instrumentality of transportation assists the carrier to discharge its public function; in the other his status is that of an ordinary consignor or consignee.
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> * * * * * * *

[7] Proceedings of National Association of Railway Commissioners for 1909, page 214. The first paragraph quoted was taken from the report of the committee on car distribution and car shortage of the preceding year. Id., 1908, page 120.

Another complaint of the protestants is that privately owned cars enjoy the use of a disproportionately large part of the facilities of the carriers. During 1920 the operations of the United States Coal & Coke Company on the Cumberland division of the Louisville & Nashville Railroad had a rating equal to one-sixteenth of the entire rated capacity of mines on that division, and their private cars used for their coal loading received one-eighth of the use of the transportation facilities. Users of private cars received 100 per cent of their requirements regardless of the shortage of motive power, while unassigned mines received a much lower percentage because of the inequitable distribution of such power. The private-car owners assert that such preferential service can only exist when there is a general shortage of railroad facilities other than coal cars, such as the conditions brought about by the railroad shopmen's strike which became effective July 1, 1922.

The practices of the carriers differ. The Pennsylvania apparently permits the owner of the private cars to place its cars for the owners loading at any mine the owner designates, even though such loading be for one day only. On the Chesapeake & Ohio, on the other hand, the placement of cars for the owners loading at mines other than those owned by him is permitted if regularly continued for a considerable period. But where the assignment is merely occasional the placement of cars is made on the same basis as system cars. Any overplacement of private cars at a mine on one day is subsequently adjusted to effect an equal distribution as between all mines. The Norfolk & Western does not handle private coal cars on its line. The Illinois Central favors the private coal car because it reduces the necessity of railroads furnishing themselves with equipment to take care of the gross volume of business that ordinarily they will be required to take care of in their own cars. The United States Steel Corporation owns a large number of private coal cars which are loaded at mines on the Illinois Central. The cars are delivered to the Illinois Central by the Elgin, Joliet & Eastern in train lots, and after the cars are loaded they are returned by the Illinois Central in the same manner.

The record indicates that during 1920 and the summer of 1922 certain carriers, particularly the Pennsylvania, Chesapeake & Ohio, and the Louisville & Nashville, accorded to private-car owners a greater use of their facilities than they should properly receive. The extent to which this was done, however, is not clearly established of record. The conditions of the past year were abnormal. The carriers' locomotives, due to the shopmen's strike, were in poor condition. The strike in the bituminous coal fields made a heavy demand for coal from the nonunion fields, a large part of which are located

upon the lines of the three carriers mentioned, and taxed the carriers' facilities. The termination of the coal strike increased the demand for coal, with a resulting greater burden upon the carriers' already overtaxed facilities. In the congestion when the carriers were unable to transport promptly all traffic offered them, certain of them did prefer the handling of private cars from motives of convenience. These cars were usually moved in train lots in shuttle service, and avoided the additional switching and spotting service necessary in furnishing a like amount of transportation to the numerous mines shipping commercial coal in system cars. The abnormal conditions of the summer of 1922 illustrate the natural effect of the assigned private car practice under conditions which should call for the utmost consideration of all shippers in order that the transportation disabilities of the carrier should be borne as equally as possible. Coal in private cars under the present arrangements is susceptible of easier movement than similar shipments in railroad cars because it usually moves regularly between the same points in large or trainload lots. This merely indicates the greater likelihood that such cars will receive preferred treatment.

There are other practices of some of the carriers in the handling of private cars which are not free from criticism. We have in mind particularly the placement for the private-car owner of its own cars at certain mines to be loaded with coal for the owner's use from day to day and the placement of system cars at the same mines on alternate days; if on the days on which such private cars are placed they exceed the pro rata share of cars to which that particular mine would be entitled if dependent wholly upon system cars, no subsequent adjustment of such overage is made. Any attempt on our part to mitigate the bad effects of such a practice is but temporizing. The private-car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or he is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable.

The owners of private cars contend that such cars are essential to insure a regular and adequate supply of coal; that the cars were purchased only after all other remedies had been exhausted and that it was the only method whereby their coal requirements might be met, except by the assignment of cars on order of the Government. It is claimed that the use of private cars during car-shortage periods releases railroad cars for strictly commercial mines, which otherwise would have to be placed at private-car mines. This overlooks the fact that particularly in times of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important

to him than a slight addition to his allotment, effectuated by giving his neighbor and competitor a better car supply. Except during car-shortage periods the investment which these owners have made, estimated at approximately $30,000,000 is of no practical utility to them. The mileage allowance paid by the carriers for the use of private cars, which is sufficient when the cars are employed in transportation service, is not adequate compensation for ownership when there is a car surplus. But the investment was voluntarily made, by persons not common carriers.

Congress has given the coal consumer a right to demand that adequate transportation facilities be provided by the railroad carriers, and has afforded a remedy for the enforcement of that right. We are now prosecuting an inquiry upon our own motion, No. 14489, under the provisions of section 1 of the act, as to the adequacy of the facilities for the performance as common carriers of car service by each of the railroads subject to our jurisdiction, with a view to making an order requiring the respondents to provide themselves with such safe and adequate locomotives and cars as may be warranted by the facts as shown, and as required by law. This power upon our part, and remedy afforded to the shipper, first came into the interstate commerce act as one of the amendments made by the transportation act, 1920. The change in the law differentiates the present case from all those in which the assigned-car rule was developed as prior to February 28, 1920, we had no power to require a carrier to provide itself with reasonable facilities such as equipment, no question of discrimination being involved. *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208.

Upon the facts shown of record we find and conclude that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by

such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

There appears to be no reason for the continuance of the investigation as to carriers serving solely anthracite coal mines, and the present investigation, so far as it in terms covers the distribution of cars at anthracite mines, will be discontinued.

We will enter an appropriate order, effective September 1, 1923.

EASTMAN, *Commissioner*, concurring:

I concur in the majority report, except as to the conclusion "that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act." Paragraph (12) contains this provision:

> During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count *each and every car* furnished to or used by any such mine for transportation of coal *against* the mine. [Italics mine.]

I am unable to escape the conclusion that it was the intent and is the meaning of this provision that in times of car shortage every mine should be limited to a pro rata share of the available car supply, and that in computing this share every car furnished to the mine, whether private car or railroad-fuel car or car for commercial loading, should be counted. Under the assigned-car practice now in effect, however, it appears that the number of such cars placed at a mine may, and often does, exceed its pro rata share of the available car supply. It does not seem to me that in such cases the cars are being counted "against" the mine. The purpose of paragraph (12), as stated by the House committee when it was reported, was to

avoid "any possibility of the recurrence of the evil of what is known as 'assigned cars.'"

I am aware that this view is not in accord with the opinion expressed in *Assignment of Freight Cars*, 57 I. C. C., 760, a report in which I joined. It is a view, however, reached after more consideration than I was able to give to the question at the time of that *ex parte* report.

I am authorized to say that COMMISSIONER CAMPBELL concurs in this expression of opinion.

HALL, *Commissioner*, dissenting in part:

I concur in the conclusion of the majority that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act, but must dissent from the findings of unreasonableness and undue prejudice.

The car-distribution rules condemned by the majority are those prescribed by us more than 15 years ago. Our orders prescribing them were upheld by the Supreme Court of the United States. We then recognized that a carrier by railroad has the right to secure its fuel supply either from mines which it owns or from mines the entire output of which it purchases; and that if its contracts for fuel cover such supply as it reasonably needs for current operation it can use its equipment to procure its fuel even though operators of commercial mines are thereby deprived during periods of car shortage of some cars which they would receive on a strict prorating of the available supply. In other words, we found that this use by a rail carrier of its cars did not constitute an unjust discrimination or undue prejudice prohibited by the act. It is well settled that mere difference of treatment does not constitute unjust discrimination or undue prejudice. The right which we found to inhere in a rail carrier has not been abridged or denied by subsequent legislation. It rests upon the fact, elementary, fundamental, and partaking of the highest public necessity, that a railroad must have an adequate supply of fuel in order to supply the people with adequate transportation. This of course means that a railroad must have a reliable, steady flow of coal, of even quality best suited to its different needs, at reasonable cost.

The majority take away this right and brush aside the public necessity. They substitute nothing which will protect either the public servant or the public served. In focusing their attention upon the commercial-mine operator they seem to lose sight of the entire traveling and shipping public, as well as the myriad industries dependent upon transportation, all entitled to as much consideration as the producer of coal when the issue of unreasonableness or undue prejudice is raised. In effect, although not in intent, their

findings subordinate the needs and interest of all others to those of the coal industry. But even in that restricted field it little profits to compute the fractions of a car which uniform prorating would add to the daily supply of a commercial mine if the carrier lacks power to place the empties or haul away the loads. Again, it is said that the commercial coal goes in part to public utilities of various kinds whose needs are as great, and impressed with a public interest as great, as those of the railroads. That is true, but the difference is that the railroads reach the mines and the other utilities do not. Before they can use the coal the railroads must bring it to them. Therefore in their interest, and that of the public they serve, the supply of fuel for the railroad service comes first in importance as well as in time of use.

Until now the commission has recognized that fuel was as indispensable to the rail carrier as the rails or ties or roadbed or cars or locomotives, not at some times merely, but at all times, if the public is to be adequately served. The duty of the common carrier is to carry for all who offer, "unless his coach be full."

Use of the assigned car and the private car is not ideal, but it is at least practical, has been tested in times of stress, and no workable substitute therefor has been developed or is now prescribed. The alternatives left are confiscation by the carrier or priority orders by us. Is not this a recognition in another form of the public necessity that the carriers must have fuel in preference to other consumers? The majority would reserve to the commission the right to direct a discrimination in the distribution of cars which it condemns as unlawful when practiced by the carriers. Can it be said that the preferential assignment of cars under orders of the commission will not tend to bring about the very conditions in the coal-mining industry for which the assigned-car practice is here condemned? The harm, if harm there be, to the industry will be just as serious if brought about by a series of service orders as if brought about by application of the general rules prescribed and sanctioned by us and now in effect.

Respondents propose to include in their definition of assigned cars the words "and cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission." This is not condemned by the majority. But the treatment of private cars, and cars assigned for railroad-fuel loading in accordance with our cited decisions, is condemned as both unreasonable and unduly preferential. If unreasonable, how can we by priority orders make the same treatment reasonable? Our power under section 1 (14) is to establish reasonable rules and practices with respect to car service, and under section 1 (15), in time of emergency, to make such just and reason-

the spot market and compelled to pay very high and in some instances extortionate prices, or else resort to that evil of evils, confiscation, which brings in its train an ultimate adjustment at the top price. These are not mere speculations of what may happen. We know from experience that they have happened and must happen again when carriers are denied recourse to the only effectual preventative.

The assigned car enables the railroad to select its coal to meet its various needs, permits the concentration of purchases and policing as to quality as well as the assembling and handling at minimum expense, and guarantees delivery. It also results in regular mine operation, steady employment of miners, reliable supply, and thereby in lower costs. The ultimate effect is efficiency and economy. This is obviously in the public interest. Whether the assigned car is for the greatest good of the greatest number is apparently of no concern to the operators who assail it.

Much of the opposition to the assigned car is based upon its effect on mine labor. It is not for me to point out the shortcomings of the coal industry, overdeveloped as it is, with thousands of mines so situated that they can only be operated at a profit when there is a runaway market. An adequate all-the-year-around supply of transportation would leave many of those mines permanently closed, and naturally their operators become the stormy petrels of the industry. The record shows that in six years the number of mines, not including wagon mines, grew from 3,669 in 1916 to 8,722 in 1921. The term "car shortage," as used by coal operators, is usually applied with reference to the capacity of the mines. That capacity far exceeds annual consumption or demand. Whatever may be the troubles of the coal industry they can not and will not be remedied to any appreciable extent, if at all, by the action of the majority.

In *Assignment of Freight Cars*, 57 I. C. C., 760, 766, we said what is as true to-day as it was then:

> No other definite rule or practical plan has been suggested by the interested parties in the many conferences that have been had on this subject. No rule other than that laid down by the Commission and sustained by the Supreme Court had been presented or tried after the decision of the Supreme Court, hereinbefore cited, until, as stated, the rule was changed under war conditions when the railroads were under federal control and the production, distribution and marketing of coal was under a war time federal administration.
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> Both before and since that action was taken parties interested in or affected thereby have been freely invited to suggest some workable concrete plan under which the railroads can get a dependable supply of the quality of fuel adapted to their uses which can fairly be substituted for the rule to which some objections have been made. No one has suggested such a substitute rule.

Thus far I have dealt chiefly with railroad cars assigned for railroal fuel. Private cars are included in our former decisions as in the rules which respondents now propose. Some of the operators own and use private cars and perhaps for that reason the attack upon the private car is not as concerted or vehement as upon the assigned railroad car. My brother Daniels truly observes that the private car is not an outlaw. At this stage of our rail development and equipment it serves a useful purpose.

Everything in this record tends to show that the private ownership and control of coal cars results in greater economy and more efficient use, and, of course, the whole public is to that extent benefited. Here as elsewhere throughout this proceeding we should heed the paramount interest of all classes of shippers, the railroads, and the entire public, and not let those interests be obscured by the demands of one class of producers. Acting under what has heretofore been a right, recognized by statute and by us, shippers, particularly those who are given preference in our service orders, have tended more and more to equip themselves with their own coal cars. This should be encouraged, for, if many shippers would provide their own cars, the carrier equipment available for others, particularly the smaller shipper, would be greatly increased, car shortages would be reduced, the necessity for service orders would be lessened, and thus the public interest would be served to a substantial extent.

In our report in *In the Matter of Private Cars*, 50 I. C. C., 652, at pages 672 and 673, we said:

> For more than 30 years privately owned cars have been extensively used to transport commodities in interstate commerce. They came into use originally because the railroads would not, or did not, supply them in sufficient quantities to meet the demand. * * * If private ownership or control of cars of particular types results in greater economy and more efficient use, the whole public is to that extent benefited.
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> In the beginning carriers could no doubt have insisted upon their right to furnish all equipment. They did not do so, and in the course of years there has grown up a system of private ownership of such magnitude and importance that it must be reckoned with as an existing condition. * * *
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> The system of the use and supply of private cars that now exists can not be at once and radically changed, without serious consequences to shippers, carriers, and the public.

The power to tax is the power to destroy. Not so with the power to regulate. It should be used to throw about the use of assigned cars, including private cars, such proper precautions and restraints as will promote the public interest, but not to do away with the use itself for all practical purposes. We are dealing with the rights and duties, as well as the imperative needs, of the great transportation systems upon whose adequate functioning the welfare of the

whole country depends. The majority by its finding of unreasonableness in what the carriers do to forestall impairment of car service throws open to challenge the reasonableness of such priority orders as the commission may put forth in future attempts to ameliorate that impairment when it comes; and by its finding of unlawful discrimination condemns the exercise of a carrier's right, instead of surrounding it with appropriate safeguards against abuse. Subject to such safeguards, which can readily be prescribed from the record now before us, the rules proposed by respondents are to my mind founded on reason, fortified by experience, abundantly justified by public need, and free from unlawful taint.

For the reasons which I have endeavored to indicate, as well as for others well expressed by my dissenting brethren, I am unable to concur in these findings of the majority.

DANIELS, *Commissioner*, dissenting:

I concur in the report so far as it construes paragraph (12) of section 1 of the act.

I am unable to concur in the finding that the present practice of assigning private cars and system or foreign-line cars for railway fuel to bituminous-coal mines is unjust or unreasonable or unduly or unreasonably prejudicial.

My reasons for withholding my concurrence in the report's finding may be summarized as follows: First, the right of a common carrier to obtain fuel for carrier purposes is based on such paramount necessity that the assignment of cars to mines whose entire output is taken by the carrier, even though such assignment of cars disregards a pro rata allotment of open-top equipment among all mines, is not unduly preferential of the carriers or prejudicial to the shippers of commercial coal. Unless the carriers obtain sufficient fuel of the character best suited for effectively moving their locomotives, it is apparent that efficient and economical operation is rendered difficult or impossible. The resort by carriers generally to the use of the assigned car would indicate that their experience demonstrates that this system is the most effective, efficient, and economical to attain the end sought. Nor am I persuaded that the abolition of the practice under the present rule will have any other effect comparable with the increased price of fuel to the carriers and a consequent increase in the cost of transportation. I am not persuaded that the abolition of the present practice will appreciably reduce the net cost of mining or moving commercial coal. New England carriers testify that the abolition of the practice will require a doubling of the amount of coal currently stored. Such augmentation of storage will absorb for railway-fuel use an additional number of open-top

cars. It will saddle New England carriers with an additional cost per ton for the additional amount of coal they will have to store. It will augment the per diem and car rental. The same or similar effects may be anticipated in all regions of the country. Every additional car absorbed for the supply of railway fuel will lessen to the same degree the number of open-top cars available for general commercial use. It is argued that the abolition of the rule will permit an increase in the working time of commercial mines. The possible increase is, in the first place, not great quantitatively. It may amount to three days per month. There will be a corresponding diminution in the working time of the mines supplied now with assigned cars. The diminished overhead expenses per ton in the first instance will be offset by the increased overhead expenses in the second. Moreover, it must be borne in mind that, except in periods of shortage of open-top equipment, there will still continue a difference in the working days per month between mines which secure large contracts covering their entire output and other mines which are not equally successful in making similar contracts for the disposition of their coal. When it is remembered that, taking a period of 10 or 20 years, the number of months in which there is a shortage of open-top equipment is a very small percentage of the total time, it would appear that the collateral effect of equalizing working time between commercial mines and assigned-car mines in the period of shortage of open-top cars will be in the long run almost negligible. The report properly indicates that the basic difficulty in the coal situation is the overdevelopment of bituminous mines and the vast potential oversupply of current requirements. This fundamental difficulty will persists despite the abolition of the assigned-car rule.

In short, so far as railway fuel is concerned, the assigned-car rule has proved on the whole a workable means of affording an adequate fuel supply of the proper quality and at a low price per ton. The revocation of the rule, in my judgment, will jeopardize the regular supply of dependable railway fuel; it will make for increased locomotive failures by reason of the inability of the carriers to obtain the grade of fuel which is most efficiently employed; it will augment the price of railway fuel without appreciably affecting advantageously the price of commercial coal; and it will render inevitable, in times of emergency, a resort to emergency orders carrying priorities which, in essence, are an admission of the necessity and utility of the present practice.

So far as the supplying of connecting carriers with coal is concerned, many of the considerations outlined above will apply. These connecting carriers on whose lines coal in sufficient amount is not mined now own open-top equipment which they may in part allot

to other uses upon their own rails and thereby make an additional draft upon the open-top equipment of the carriers upon whose lines coal mines are located. Such a withdrawal will tend only to lessen the pool of open-top equipment now available for the movement of coal traffic generally.

So far as the so-called private cars are concerned, the situation is slightly different, although I am not persuaded that the abolition of the present practice will result in any advantage to the public generally or to the ordinary shippers of commercial coal. With the violent fluctuations in the coal demand as between periods of intense industrial activity and periods of industrial depression, it is perhaps questionable whether the railroad carriers can be reasonably expected to have ready at all times open-top equipment of their own ownership capable of carrying the peak load. Many private cars have been provided by their owners for just these periods of peak demand. They have thought it wise policy to make the investment to an aggregate amount of something like $30,000,000 rather than to risk their coal supply upon available equipment of carrier ownership or to confront the necessity of having to pay spot prices for coal in a runaway market. The abolition of the present practice limits the availability of these private cars for transportation purposes. For example, a public utility may turn over to a carrier 100 cars for placement at mines where the utility owner has contracted for the entire output. At present all of these cars would be placed at the mine, and, if the output suffices, they would all be immediately loaded and moved. My understanding is that, under the change in the rule, while these private cars would have to be placed eventually at the designated mine, only the mine's ratable proportion could be moved at a time when there was a general shortage of open-top equipment. If the shortage amounted to 50 per cent, then half of these privately owned cars are required for the time being to stand idle on track and may not be moved except in accordance with the rule that assigns all open-top equipment to all mines in proportion to their respective ratings. How such a withholding of these cars from the work of transportation, even though for a temporary period, can benefit the public generally I am unable to see.

It should also be remembered that the private car under the law as it now stands is not an outlaw. The act contemplates the furnishing of service and of facilities by the owner or the shipper of freight. Section 15, paragraph (13), provides that—

> If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, * * * determine

what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished * * *.

Clearly, private cars are an instrumentality.

In our report *In the Matter of Private Cars*, 50 I. C. C., 652, 672, we say:

> An amendment to section 1 of the act, approved May 29, 1917, provides as follows:
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> "The Commission shall, after hearing, on a complaint or on its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier, and the penalties or other sanctions for nonobservance of such rules."
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> The Congress has thus recognized the use of privately owned cars in transporting the commerce of the country, and has provided for their control by the Commission through rules and regulations of carriers hauling them.

The warrant for the carriers' use of such an instrumentality is found in the act. For us to make a finding which shall in effect restrict, or cripple, or prevent the use of such an instrumentality appears to me to defeat the plain expectation of the Congress expressed in the section above quoted. It may even be suggested that such action on our part offends against the constitutional protection thrown about private property. It is urged that private coal cars now absorb a disproportionate share of carriers' power and rails. But the legalized use of instrumentalities furnished by shippers implies the right to use a commensurate share of carrier power and tracks. Some of these private owners of open-top equipment utilize such equipment as a daily necessity in carrying on ordinary industrial operations where a steady supply of coal is absolutely indispensable. Other owners of private cars are public utilities supplying gas, electricity, and local transportation. Where concerns of either character, in reliance upon the lawful use of private equipment, have made substantial investments therein, I question the wisdom as well as the legality of impairing the serviceableness of such equipment by substituting the practice carried by the majority report. In the long run, it will amount to the unsatisfactory substitution of hastily issued emergency and priority orders whose effectiveness will be less than that secured through adherence to the present workable arrangement.

In outlining the above objections to the majority report, I am free to say that many of the abuses connected with or attendant upon the assigned-car rule might be properly controlled and virtually eliminated. I think, however, that the remedy proposed is likely to prove far worse than the difficulties experienced under the present practice.

POTTER, *Commissioner*, dissenting:

While the expressions of COMMISSIONERS HALL, DANIELS, and COX seem to me sufficient to condemn the conclusions of the majority report which are adverse to the use of assigned and private cars, the subject is of such importance that some elaboration may be justified.

Under the guidance of prevailing decisions, which I think we should follow, I accept the conclusion that paragraph (12) of section 1 of the interstate commerce act does not prohibit the use of assigned or private cars, even though pro rata distribution of all equipment is not observed and that we are authorized to sanction their use under proper restrictions. The question is whether under any circumstances and how they should be used where pro rata distribution is not observed. It is, perhaps, unfortunate that private cars for handling commercial coal and company and foreign railway-fuel cars are condemned together, for they are very different.

To my mind assigned and private cars perform essential functions which can not be accomplished without them. They are instrumentalities which can be used in correcting what is perhaps the most unsound condition in the industrial and commercial life. To forbid their use, if we have the power, will not be in the public interest.

In my opinion, if the majority report properly construes paragraph (12) of section 1, we have no authority to prohibit the advantages of assigned and private cars by requiring their pro rata distribution, although we may reasonably regulate their use. There is ample precedent for the use of the assigned and private car. In the early history of railroads all cars were owned by shippers. The charters of some railroads now obligate them to haul private cars. If a carrier desires so to do, there is nothing in the law which prohibits it, or gives us power to prevent it, from making proper arrangements, through tariffs if need be, with a view to hauling private cars for an appropriate charge so long as the same privilege is permitted to all and engaged in without unjust discrimination. Carriers have much latitude to determine how they will handle traffic, provided equal privilege is extended to all and all are subjected to the same rule. If a carrier elects to haul private cars, we can require that they be hauled for all who offer them. We can within reasonable limits restrict their use so as to require, for instance, that coal cars serve a particular mine for a period of reasonable length in order to avoid market disturbance. We are without power, in my judgment, to say, as the majority report does in effect, that a private car can not be used at all except as a part of carrier equipment.

There is public right and need to have railway fuel of high and even quality secured at the lowest cost. Assigned and private cars make for efficient and economical transportation. They promote regular mine operation, steady employment, reliable supply of coal of excellent quality to consumers, and low prices. If, under these circumstances, their use involves discrimination against some individual coal producers, such discrimination is in the public interest, is just, and should be supported. There is discrimination when cars are assigned to particular mines, but under existing conditions that discrimination is just and not unjust. There is discrimination always when, by common consent, anthracite coal is given a 100 per cent car supply. Where discrimination is just, it should be allowed. Only unjust discrimination is prohibited.

Carriers are not receiving the returns that the law contemplates, that fairness requires, and that the public interest demands as an encouragement to expansion and increase of carrier capacity. At the same time the country needs lower rates. Increased efficiency and reduced operating costs must be looked to for general rate reductions. Next to labor, coal costs are the highest item of operating expense. No agency should leave undone anything within the legitimate exercise of its powers to bring about a reduction of coal prices. From every quarter there is demand upon the carriers for increased efficiency and reduced operating costs. At such a time we, the guardians of public and carrier interests, are compelling the carriers against their will to adopt practices which will impair efficiency and increase costs. It must be recognized that the railways are making supreme effort, with much success, to meet the demands upon them. They are now more efficient than at any prior time in their history. With fewer men they have in recent months exceeded all prior achievements. They have been handling tonnage in record volume so efficiently that there has been scarcely a murmur of complaint and so smoothly that their marvelous performance is scarcely noticed. Already superior in public service to every other system of transportation in the world, they are headed for better work in which there is promise that railway problems will disappear. We now come forward with condemnation of their economy, with directions that require disregard of the public interest and a policy of extravagance and waste.

The law authorizes regulation of transportation but not of the purchase of supplies, except in special instances not related to the car problem. Railways admittedly have the right to purchase fuel and other supplies where their judgment suggests. They require this right in order to obtain deliveries at points most convenient for

use, economize haul and storage, avoid congestion, select fuel most desirable to meet varying conditions and power requirements, and promote efficiency and economy in general. Coals differ greatly in quality and condition, depending on the seams operated, methods of operation, and preparation, even as among mines on the same seam in the same locality. The percentage of carbon and volatile matter, firmness of texture or friability, and whether free or slow burning are important factors affecting efficiency and economy in coal use. The amount of dirt present because of bad roof or floor or partings or of careless mining methods is of importance; also whether the ash content is high or low, and the fusing point of ash—whether so high that the ash readily escapes through the grate or so low as to fuse, clog the grate, shut off draft, and cause delays and engine failures. The importance of these various factors depends very largely upon the conditions under which coal is used. For these reasons the quality and condition of coal which different roads can use with efficiency and economy depends upon their peculiar operating conditions and the traffic which they handle. On carriers of light traffic density, high percentage of level track, easy curves, and steady regular evenly sustained train movement, the fuel problems are much less serious than on carriers with greater traffic density, heavy grades, varying profile, high degree of curvature, demand for steam fluctuating greatly during short periods because of operating conditions, necessity for high speed, traffic congestion, frequent meetings, and numerous delays. The conditions under which coal is used in the fire box of a locomotive are more difficult than those to which coal is subjected in any other use. Grate space is limited. Rapid conversion of heat units into available energy in small area is required, particularly under the severe conditions last mentioned. On a level railroad even steam pressure and even fires, making for efficient use of fuel, can be maintained. Under conditions of fluctuating power demand upon a locomotive, fuel consumption to maintain power sufficient for recurring periods of need means waste of fuel during intervals between. So on some carriers a free-burning coal with which steam can be generated quickly is desirable. Careful preparation, dependable quality, and condition are of great importance. Because of necessity for forced draft, quick burning, and rapid conversion of heat units, the percentage of loss in cinders through the stack and in unconsumed gases is greater in locomotives than under other boilers. As coal is used under a locomotive, less than 10 per cent of its heat units are converted into power available at the drawbar. The public interest requires that carriers select their coal with discrimination, and because of varying conditions general

rules can not be applied to them. While under the law carriers have the right to buy all supplies, including coal, where they please, the majority report destroys this right by saying in effect that they shall not use their own cars to haul their fuel unless they distribute their purchases among all mines.

How will the rule of the majority report affect a railroad which is dependent for its fuel upon mines located on foreign lines, and requires during the year at a particular junction, say, 500,000 tons of coal? The natural course for such a buying road, considering its own best interests and acting in a sensible and businesslike manner, would be to select its coal from particular mines, having regard to quality, reliability of deliveries, and price, and place its orders among a few mines. If the equipment to handle the coal is to be furnished by the originating carrier, that carrier will be under obligation to make pro rata distribution of its equipment. The purchasing carrier can not know what would be the available equipment from time to time or how, in order to insure deliveries, its contracts should be distributed. Shortage in deliveries would subject it to the uncertainties of the spot market and it would have to increase its price when coal is in demand. The sensible course would be for such a buying carrier to furnish its own equipment in which to haul its coal. But, if this course were followed, all cars in excess of the general percentage distribution would have to stand idle. That would defeat the purpose for which the foreign line provided the equipment, and knowledge that such a practice would be followed would naturally deter foreign lines from purchasing equipment, although present conditions demand such purchases. COMMISSIONER HALL points out what recently happened to such a carrier. It is likely to happen to any carrier at any time, and certainly will happen often.

Coal contracts generally contain provisions to the effect that the producers are not responsible for delays due to car shortage and strikes, thus exposing the buyer to these serious contingencies. A mine may have capacity for an output of 50,000 tons per month. One about to contract for coal, judging from past experience, would conclude or guess upon a 50 per cent car supply or an actual output of 25,000 tons per month. Any reduction below this figure in the actual output because of car shortages which could not be foreseen (and they always occur) would result at best in a pro rata reduction of deliveries under all contracts. A consumer dependent upon a pro rata delivery of cars can not possibly foresee what deliveries will be. If coal must be had regularly, the consumer must go into the spot market unless he has available for his use assigned or private cars over which he has absolute control. Railroads and public

utilities are such users. The fact that there is in the country an enormous surplus of developed and equipped mines beyond the need makes reliability of car supply impossible *so long as cars must be prorated.* In times of increased demand output is increased and calls for coal cars are increased. Unless cars are assigned, the available equipment must be distributed according to the traffic offered for shipment. No one can foresee what traffic at any particular time is to be offered, and no one can anticipate what the car supply will be. Ownership by foreign lines of cars sufficient to insure delivery of their coal supply and the right to restrict their use is essential to protect carriers against a fuel shortage, insure the observance of contracts, and the purchase of coal at advantageous prices. The mere purchase of cars by foreign lines without their assignment will not afford protection, for they would have to go with the general pool.

It is well known that mines assured of continuous operation favorable for low production costs will contract at lower prices. Opponents of the assigned and private car object to that desirable result. In order to maintain unhealthy and uneconomic conditions in the coal-mining industry they contend that they should have a part of the order of the buying road at high prices, although the interests of the general shipping public, which pays the carrier's coal bill, requires low fuel prices. The opponents of the private and assigned car demand that the interests of the many be sacrificed for the interests of the few, and we have sustained them. Such is the gist of this entire controversy. Instead of prohibiting assigned and private cars their use should be encouraged. The greater the number of assigned and private cars properly used and the fewer the mines at which they are placed, the better for all concerned. If many shippers would provide their own cars, the carrier equipment available for others would be greatly increased, and the price of coal would drop. If this commission would announce the right of shippers to use private cars in their own service, reasonably regulated to restrict their use to particular mines for long periods, and that as thus used they would be protected, private capital would promptly come to the aid of the carriers and provide private cars to an extent which would insure ample equipment for all, reduce coal shortages to a minimum, and serve the public interest in a vital way.

The interstate commerce act gives us emergency powers. It licenses as a necessary evil the abomination of priority orders. Whenever there is a coal shortage we are required to resort to these powers in the interest of carriers, public utilities, hospitals, etc., which everybody recognizes must under all circumstances have fuel.

Cars dealt with in emergency orders are withdrawn from general use at times when most needed. So used they cause confusion and disturb the market. With permission and protection for private cars, their use would be known and be counted upon and would affect no one injuriously. The shipping public stands ready to augment the general car supply and eliminate the necessity for emergency priority orders largely if not entirely. The majority report requires continuance of the abomination. Whenever because of car shortage it is thought that the assigned car would hurt we will have to at that time come forward and do more harm with an emergency order.

Railways and public utilities which consume coal in large quantities in times of shortage are recognized as entitled to preferential treatment. Now, in times of emergency, they are placed ahead of the general public. If given permission to do so, they will so equip themselves that they can be considered last. It would seem obvious that in the public interest the policy of efficiency and economy enjoined by law requires that consuming carriers provide equipment for their fuel, and that such equipment be devoted to their use at such mines as in the exercise of good business judgment should be selected as best suited. The majority report forbids this sensible businesslike practice. The statement in the majority report regarding the experience of the New Haven Railroad in the purchase of spot coal on the one hand and the use of the assigned car to take coal under contract on the other is strong condemnation of the conclusions at which the majority report arrives.

The majority report ignores the aspect of the assigned and private car as a storage facility. Admittedly a carrier is at liberty to provide itself with facilities for the storage of coal and such is the carrier's duty within reasonable limits. Vast expenditures would be required to establish facilities to store coal in considerable quantities at various points. There are no regular periods of surplus and too much storing would convert periods of surplus into periods of shortage. Costs of handling fuel in and out of storage are substantial. Much coal thus stored would require removal to other points for consumption. The most economical storage facilities, all things considered, up to a certain amount, are bins containing from 50 to 100 tons, with wheels under them, to facilitate prompt and economical handling and movement as required. While the carrier is at liberty to install inefficient and inconvenient stationary storage bins, the majority report denies the right to provide storage bins on wheels (cars) if such are to be sent to the mines for coal and used to transport coal from the mines, even though such use

would add to the availab'e equipment and to that extent release cars for other commercial use.

Just how industry will get along without the private car it is difficult to see. The common carrier and the public utility can be taken care of after a fashion through emergency orders, but at great inconvenience and expense to everyone else. Not so with a private industry. Take, for illustration, a large steel plant, upon the continuous operation and financial success of which many thousands are dependent for employment and more thousands are dependent for low-priced commodities produced at low cost. Such an industry may use a thousand tons of coal and coke per day and require deliveries every day. Economy and certainty of fuel constantly, suggests that it control its source of supply. It operates its own mines and coke ovens, which are 10, 50, or hundreds of miles away. Fluctuating demand on carrier equipment and uncertainty of carrier supply have compelled it to buy cars, which the railway hauls back and forth. It now enjoys continuous operation. The majority report says that no matter how many cars the industry has, it can not use any greater percentage for its requirements than the railway is able to furnish to all mines on its line for their requirements. Its extra cars must stand idle or it must divide all of its cars among all mines on the carrier's line and itself take only a pro rata share. The number of its own cars that it may use will not depend upon its own need but upon the need of others. When there is only a 50 per cent car supply for other mines, it must reduce its operation 50 per cent and shut down half of the time. Labor must be thrown out of employment, manufacturing costs must soar, and the whole country must suffer, because there are too many mines, and in order that mines that ought not to exist may continue to live at public expense. Seemingly, if the rule is to apply to coal, it must apply to other things and cars used for other supplies must be surrendered to the general pool.

We might well consider the effect of the rule of the majority report upon an industry like the Ford Motor Company, which employs, I believe, something like 70,000 men and which, because of its efficiency, is able to pay high wages and produce at low costs. It might well be that such an industry would find that steady employment of its men and their scale of wages and the low cost and selling price of its output would be imperiled by an uncertain car supply, increasing fuel costs, and unsatisfactory quality of available coal. (General information now current suggests the use of the Ford Motor Company as an illustration.) Good management in the interest of all concerned would suggest the acquisition of coal mines and the appli-

ation of methods of high efficiency in their operation. The use of private cars assigned to particular mines would seem to be indispensable. The majority report bars them. It supports coal operators who would force the Ford Company to buy coal that would not suit its purpose and pay high prices because of high costs which Ford management would reduce. It says that inefficient mines which should not exist must be supported at the expense of the Ford Company, its employees, and the purchasers of its product. This illustration is typical of what the majority report will do throughout the entire industrial world.

Under the majority report railways having mines on their own lines can not use their own cars to protect their coal supply, and if there is only a 50 per cent car supply for all, they may have only 50 per cent of their requirements. They, too, must shut down in times of shortage or depend on storage, which in large quantities beyond a reasonable point can be accomplished only at great cost. Similarly, if we are consistent, cars used for other supplies, such as for ballast, must be prorated, even though maintenance work must stop. The only escape from these results is through confiscation or emergency orders, which at best would interfere with the car supply for mines generally more than would cars regularly assigned, and which the commission has heretofore consistently condemned.

There is another aspect of the assigned and private car more important, it seems to me, than all the rest. So far little consideration has been given to what is the basic vice in the whole coal situation. We have within our reach and subject to our will one of the roots of economic and industrial disturbance. With opportunity to uproot the evil, the report nurtures it and attempts only to find a way to get along in spite of it. We should destroy it, and the assigned and private car will help to do it.

The conditions which prevail in the bituminous-coal industry have been going steadily from bad to worse during the last decade. They are a wasteful burden on economic life and breed discontent in our social order. Responsibilities are so scattered and faults are so widespread that individual endeavor can not supply a remedy. The allurements of profits have led to gross overexpansion. With national need for about 10,000,000 tons a week, the capacity of developed and equipped mines is more than 20,000,000 tons per week. The investment in development and equipment and all that goes with mining operations is more than twice the need if the industry were carried on so as best to serve the public interest. Excess capacity beyond what the market demands means idleness in the same ratio of mines, equipment, and men. An excess investment of more than

100 per cent would bring ruin to any other enterprise. All of the excess burdens are distributed over the actual output of running time and are borne by the consumer in the price he pays for coal. Profits have not been great, as a rule, in coal production, and with reasonable production costs would not make the selling price excessive. High coal prices are due mainly to excess production costs, which are caused by the excess capacity developed, maintained, and operated.

Not only are mines developed and equipped to produce 20 million tons of coal a week but men sufficient to mine 20 million tons of coal per week are being supported by the industry. Mines can not run full time because 11 or 12 million tons of coal a week for a considerable period would glut the market. They therefore run only two and three days per week. In order to support men working on half time costs per ton have so increased that mine wages are out of all proper relation to wages paid on the farms and by railroads and other industries. Common laborers make $7.50 per day, loaders make from $15 to $18 per day, runners of cutting machines make from $18 to $20 per day, runners of gathering locomotives make from $18 to $20 per day. The result is that to produce coal is costing upward of $2 per ton, whereas 10 years ago it was costing about 75 cents per ton.

Millions upon millions are being spent to provide additional mining capacity in face of the fact that every mine opened and every ton of additional capacity developed makes matters worse. No check is being applied. The sedatives of price fixing, zoning, and regulated distribution have been administered, but they do not reach the trouble. Reduction of high coal-production costs is a public necessity. A proper reduction of producing costs to a normal level should make a direct saving to the country in the price of coal of from $500,000,000 to $750,000,000 per year and much additional indirect saving. An amount equivalent to a contribution of perhaps upward of $10 per annum by every man, woman, and child in the country is being handed over to the coal producers in order to maintain mine employees as a favored class and mine operations as a favored industry.

Costs and selling prices can be brought down through control of transportation. If transportation were available to handle 11 or 12 million tons of coal steadily the surplus of available coal would break prices by forcing competition among producers, would close up high-cost mines, concentrate activity in 50 or 60 per cent of the mines, furnish steady employment at fair wages to the right number of men who should be engaged in coal mining and release the sur-

plus for other industries where they are needed, reduce transportation cost, and break the vicious circle of high prices. A surplus of 10 per cent above the market demand for any article of commerce represents the difference between a price-raising shortage and a price-lowering surplus. A sustained surplus of coal will bring reduction. Everything is favorable for that surplus except transportation.

Increased available transportation can be obtained only through the acquisition of additional equipment or by increasing the efficiency with which existing equipment is handled. The question as to whether carriers should provide additional equipment is involved in another proceeding which is pending before us. At the present time they are making unparalleled expenditures to better equip themselves to render service. There is doubt whether it is to their interest to increase their investment in coal cars and whether the public which in the end pays the carrying charges can afford to have them do so.

It would seem that railways should not be expected to do more than take care of the transportation demands of industry and commerce as normally carried on. As thus carried on, need for transportation can be foreseen and reasonably met. Railroads are not responsible for the uncertainties and fluctuations in the demands of the business world for transportation. They should not be expected to be ready to move all traffic promptly during abnormal periods of transportation demand following abnormal periods of inactivity, as where a coal strike has prevented the shipment of coal which carriers were ready to haul. It would not be in the public interest that carriers at all times be equipped to handle abnormal peak loads. Sufficient facilities to handle promptly at all times the tonnage offered would mean an enormous investment that would be idle most of the time. The carrying, maintenance, and depreciation charges would be too high for a legitimate business enterprise to stand and the rates that would be required would be prohibitive.

Transportation is a step in the process by which agriculture, manufacture, and commerce carry on the national industry. Its cost is a part of the nation's operating expense. Shippers pay for it and the greater the cost the greater the shippers' burden. Therefore, the interests of all demand an efficient transportation machine wisely constructed and economically operated. Obviously the most efficient operation is continuous regular operation evenly distributed throughout the year. The coal movement under normal conditions is spread fairly evenly over the 12 months, although a little more than half the annual movement is transported in little less than

half the time. Ten million tons a week will take care of consumers' demands. With moderate provisions for storage consumers can, without any unreasonable burden, take deliveries evenly distributed over the year of approximately 10 million tons a week. The railways with their present equipment kept in good order can handle efficiently and economically 10 million tons per week. Considering, therefore, only the volume of coal necessary to meet consumers' needs, the carriers are now fairly well equipped to handle that volume moving under normal conditions. It is difficult then to see why, in justice to the carrier and in justice to the shipping public as a whole, which carries the burden, there should be enlargement of carrier facilities to meet abnormal conditions for which the carriers are not responsible. Logically, those at fault for abnormal conditions should pay for the inconvenience which they cause. In other words, the coal industry and not the railways should be held responsible and the troubles should be laid at the door of the coal producers, not the carriers. The real trouble with the coal situation is that there are too many mines in operation.

Increased efficiency in the use of existing equipment rather than more equipment is the urgent need. One way to bring it about is by revision of the rate structure and another way is by the increased use of assigned and private cars. Much that is wrong in the coal situation is due to following unsound methods in rate making, over which we have control and for which we are responsible. Abnormally low rates on long hauls are much to blame. Considerable can be done through cautious revision of the rate structure to remove unnatural adjustment with due regard for all entitled to consideration. Increased utilization of short-haul mines would increase efficiency and reduce costs in both mining and transportation. But that problem is not here. There is here the problem of car distribution—use of the assigned and private cars.

It must be borne in mind that we have just as much power to authorize and approve *unequal* distribution as we have to require *equal* distribution. The majority report recognizes that the law does not require equal distribution but contemplates that conditions may require unequal distribution. The power is left with us to authorize what, all things considered, we deem just. Only unjust discrimination is to be condemned. Public interest now requires discrimination in the use of cars and that they be assigned to particular mines. Equal distribution among all mines which the majority report requires is exactly what should not be had. What the country and the consumers of coal really require is an unequal distribution which will give the public the benefit of the economical low-cost mines and

not compel them to support uneconomical high-cost mines. A sort of zoning is what is needed, perhaps more now than in war times. The proper use of the assigned and private car is a sound, sensible, businesslike method of zoning. Expectation of equal distribution, even more, perhaps, than an unsound rate structure, has brought about the undue expansion in coal production. If the use of cars had been properly restricted, half of the existing mines would not exist. The majority report will make bad conditions worse. Under it the expansion hostile to the public interest may go on, justified, encouraged, supported, and unchecked.

Some people seem to be overlooking the fact that industry generally does not function for the benefit of mines. Consumption does not take place for the purpose of keeping mines in operation. Fuel is produced for consumption, not consumed for production. It is the public consuming need and not the private producing need that justifies the industry and consumers' rather than the producers' rights are to be considered first. Consumers have the right to demand efficient and economical production and transportation.

No industry that tolerates unnecessary expense should expect to prosper, and the coal industry could not survive if it were not able to pass on to consumers the consequences of the industry's mismanagement. The industry should clean house. Many want to clean house. They can not do it alone. We have the power to assist the worthy and compel the unworthy through revision of the rate structure and the extended use of the assigned and private car. We should do what the consumers' interests require and almost, it might be said, forget the producer. We should construe the law as directing us to require the use of equipment as public interest demands to best serve the fuel need.

The immediate answer to the problem is the assigned and private car. They will bring about continuous operation of efficient mines at low cost. There are many concerns which, if permitted, will furnish private cars. It has been brought to our specific attention that this is true of distributors in New England. Permit them the use of the private car and the New England coal problem will lose its serious aspect and the coal bill will be reduced. Many public utilities throughout the country using large quantities of coal would operate their own mines or contract for entire mine output, thus insuring dependable supply and continuous operation at low cost. Men would drift to mines thus continuously operated, which is what should take place. High-cost mines would have to shut down, and that is exactly what the existing situation calls for.

be assured of a steady supply of suitable coal. It is likewise generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires. There is no dissent from the proposition that confiscation of fuel coal by railroads is a practice to be avoided. It seems to be generally accepted that the public interest requires that the carriers shall not be subjected to unreasonable prices.

* * * * * * *

There is enough bituminous coal in the ground in this country to more than supply the demands of all consumers for a long period. There are more than enough miners to produce coal for all purposes. There are more mines than is consistent with the most efficient use of equipment, and their aggregate capacity exceeds greatly the country's demand. * * * The aggregate time lost because of car shortages, local and general, is a considerable proportion of the whole of any recent elapsed period of time. And during each period of car shortage the practical problem of supplying the railroads with fuel has been presented sharply, and the meeting of the problem has been most troublesome, and has necessarily involved considerable general disturbance of production and transportation.

and again, on page 537:

The president of the railroad company testified that the assigned cars were essential for the following reasons (1) They gave the carriers a regular and certain supply of coal in times of car shortage, (2) The coals from different fields are not of the same grade, which requires that certain adjustments be made in the locomotives. The Alabama coal is a different grade from that mined in southern Illinois, and again, the coal in different counties in Illinois has different burning qualities (3) Unless the carriers can contract for a regular and suitable supply of coal, resort to confiscation becomes necessary. (4) Going into the spot market would increase the price of coal, not only to the carrier but to the consuming public as well.

Page 538:

The assigned car, the New Haven claims, enables it to secure a uniform quality and grade suitable for its requirements and favorable to good service; permits the placing of contracts for yearly consumption at reasonable prices; requires the use of a minimum number of cars on consuming line in its fuel service; results in an increase in the number of cars available for commercial loading; reduces unloading costs, as the unloading facilities and types of cars are each adapted to the other; affords a greater opportunity for solid train movement of empties and loads; and affords a better standard of maintenance and equipment on account of system cars being more regularly at home.

Page 539:

A plan has been worked out through the use of the assigned car whereby coal produced in a certain territory will go to the same divisions continuously, and this, it is urged, results in increased efficiency. Any change in the assignment of coal lowers the efficiency of the motive power. With the assigned car the Baltimore & Ohio used an average of about two grades of coal on a division. During the strike period in 1922 it was necessary to use about 18 to 20 different grades, and the performance of the motive power was unsatisfactory.

Page 546:

If a foreign carrier were not permitted to assign its own cars to a coal-loading carrier, the latter would be under the primary duty of supplying cars at the mines. There would follow a reduction in the supply available for the commercial mines, because of the necessity for spreading the cars that were at hand over a wider field, * * * For that reason the carriers claim that such cars are a distinct advantage to the commercial operator.

Page 551:

Mine operators prefer to have the assurance that cars will be furnished for railroad fuel coal, and a promise of this character is one of the factors which influences the making of the contract. If the operators do not have this assurance, there would be a higher price.

Page 558:

Under the impetus of the war demand for coal and prolonged coal-car shortages, the ownership of private coal cars increased. There can be no doubt the incentive was the more regular and larger car supply provided under the operation of the assigned-car practice.

Page 559:

It is abundantly made clear from the record that as competition becomes more keen more and more the public utilities, steel producers, manufacturers of by-product gas, automobile manufacturers, certain chemical manufacturers, glass works, and other industries likewise absolutely dependent upon a steady supply of coal, rather than face ruin each recurring coal-car shortage, will be compelled to acquire private cars which they may have assigned.

I can not consistently condemn a rule or policy which in its application lends itself to the more efficient and economical operation of both mines and railroads and which in time of emergency must of necessity be applied in order to meet the urgent and imperative needs of the carriers and public utilities particularly, and of the public generally.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of June, A. D. 1923.

No. 12530.

In re Distribution Among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel.

The Algoma Central & Hudson Bay Railway Company; Algoma Eastern Railroad Company; Apalachicola Northern Railroad Company; Angelina & Neches River Railroad Company; Alton, Granite & St. Louis Traction Company and F. E. Allen, Receiver; Alton, Granite & St. Louis Traction Company and W. H. Sawyer, Receiver; Arcade & Attica Railroad Corporation; Aroostook Valley Railroad Company; Ashland Coal & Iron Railway Company; Augusta & Aiken Railway Company; Batesville South-western Railroad Company; The Belt Railway Company of Chicago; Benton Harbor-St. Joe Railway & Light Company; Big Sandy & Kentucky River Railway Company; Birmingham, Columbus & St. Andrews Railroad Company and A. D. Campbell, Receiver; Blytheville, Burdette & Mississippi River Railway Company; Buffalo & Susquehanna Railroad Corporation; Cairo, Truman & Southern Railroad Company; The California & Oregon Coast Railroad Company; Central New York Southern Railroad Corporation; Central Railway Company of Arkansas; Chicago & Illinois Midland Railway Company; Chicago, Lake Shore & South Bend Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Chicago & Western Indiana Railroad Company; Chicago, Peoria & St. Louis Railroad Company and B. Wilson, Receiver; Chicago, Peoria & St. Louis Railroad Company and W. Cotter, Receiver; Cleveland, Southwestern & Columbus Railway Company; Clinton & Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company, Combs, Cass & Eastern Railroad Company; Crittenden Railroad Company; The Dayton & Troy Electric Railway Company; Deep Creek Railroad Company; Detroit & Mackinac Railway Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; The East Jordan & Southern Railroad Company; East St. Louis & Carondelet Railway Company; East St. Louis & Suburban Railroad Company; East St. Louis Belt Railroad Company; The East St. Louis Connecting Railway Company; East St. Louis Railway Company; El Paso Southern Railway Company; Erie & Michigan Railway & Navigation Company; The Fairport, Painesville & Eastern Railroad Company; Fonda, Johnstown & Gloversville Railroad Company; Fort Wayne & Northwestern Railway Company; The Denver & Salt Lake Railroad Company and W. R. Freeman, Receiver; The Denver & Salt Lake Railway Company and C. Boettcher, Receiver; The Glady & Alpena Railroad Company; Granite City & Madison Belt Line Railroad Company; The Gulf & Sabine River Railroad Company; The Hagerstown & Frederick Railway Company;

The Illinois Southern Railway Company; Illinois Transfer Railroad Company; The Indianapolis & Louisville Traction Railway Company; International Railway Company; Interstate Car Transfer Company; Interstate Public Service Company of Indiana; Indiana Railways & Light Company; Kalamazoo, Lake Shore & Chicago Railway Company; Kanawha, Glen Jean & Eastern Railroad Company; Kane & Elk Railroad Company; Kansas City, Clay County & St. Joseph Railway Company; Kelly's Creek Railroad Company; Lake Erie & Fort Wayne Railroad Company; Lake Providence, Texarkana & Western Railroad Company; Leetonia Railway Company; Lehigh & Hudson River Railway Company; Lime Rock Railroad Company; Louisiana Railway & Navigation Company; Louisville & Southern Indiana Traction Company; Macomb, Industry & Littleton Railway Company; Missouri & Northern Arkansas Railroad Company and C. A. Phelan, Receiver; Madison, Illinois & St. Louis Railway Company; Manufacturers Railway Company (of St. Louis); Manistee & Northeastern Railroad and The Michigan Trust Company, Receiver; Marinette, Tomahawk & Western Railroad Company; Mariana & Blountstown Railroad Company; Miami Mineral Belt Railroad Company; Michigan Ammonia Works; Missouri & Illinois Bridge & Belt Railroad Company; Monson Railroad Company; Mount Hood Railroad Company; Muskogee Electric Traction Company; Nevada Copper Belt Railroad Company; Nevada Transportation Company; Oil Fields Short Line Railroad Company; The Oklahoma, New Mexico & Pacific Railway Company; Pacific & Arctic Railway & Navigation Company; Pajaro Valley Consolidated Railroad Company; Paris & Mount Pleasant Railroad Company and W. H. Wortham, Receiver; Petaluma & Santa Rosa Railroad Company; Rio Grand & Eagle Pass Railway Company; St. Joseph Belt Railway Company; St. Louis & Belleville Electric Railway Company; St. Louis & East St. Louis Electric Railway Company; St. Louis & O'Fallon Railway Company; St. Louis Belt & Terminal Railway Company; St. Louis Bridge Company; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis Terminal Railway Company; St. Louis Transfer Railway Company; The St. Louis, Troy & Eastern Railroad Company; Salt Lake & Ogden Railway Company; The Santa Fe, Raton & Eastern Railroad Company; Sardis & Delta Railroad Company; Savannah & Atlanta Railway Compny; Sewell Valley Railroad Company; Sheffield & Tionesta Railway Company; Sioux City Terminal Railway Company; South Georgia Railway Company; Southern New York Power & Railway Corporation; Sumpter Valley Railway Company; Susquehanna & New York Railroad Company; Tennessee, Alabama & Georgia Railroad Company and C. Hicks, Receiver; Tennessee, Kentucky & Northern Railroad Company; Terminal Railroad Association of St. Louis; Terminal Railroad of East St. Louis; The Texas Company; Tidewater & Southern Railway Company; The Toledo & Western Railroad Company and J. F. Johnson, Receiver; The Toledo & Western Railroad Company and H. A. Dunn, Receiver; The Toledo, Angola & Western Railway Company; The Toledo, Bowling Green & Southern Traction Company; Trona Railway Company; Tunnel Railroad of St. Louis; Tionesta Valley Railway Company; The Union Depot Company of St. Louis; The Union Railway & Transit Company of Illinois; Upper Merion & Plymouth Railroad Company; Utah-Idaho Central Railroad Company; Washington, Idaho & Montana Railway Company; Washington Coal & Coke Company; Waycross & Southern Railroad Company; West Chester,

Kennett & Wilmington Electric Railway Company; Western Allegheny Railroad Company; Western Chemical Manufacturing Company; Western Ohio Railway Company; The Western Pacific Railroad Company; Wheeling Traction Company; Wichita Falls, Ranger & Fort Worth Railroad Company; Wiggins Ferry Company; Willamette Valley Southern Railway Company; Wilkes-Barre & Hazelton Railway Company; Wisconsin & Michigan Railroad Company; Wyoming & Missouri River Railroad Company; Yakutat & Southern Railway Company; Central Indiana Railway Company; River Terminal Railway Company; St. Louis Bridge & Terminal Railway Company; Munising, Marquette & Southeastern Railway Company; Lake Superior & Ishpeming Railway Company; Ann Arbor Railroad Company; Atlantic Port Railway Company; Baltimore & Cumberland Valley Railway Company; Baltimore & Cumberland Valley Railroad Company; Baltimore & Cumberland Valley Railroad Extension; Baltimore & Harrisburg Railway Company; Baltimore & Harrisburg Railway (Eastern Extension); Baltimore & Harrisburg Railway (Western Extension); The Beaumont, Sour Lake & Western Railway Company; Benwood & Wheeling Connecting Railway Company; Bessemer & Lake Erie Railroad Company; Birmingham Southern Railroad Company; Brownsville & Matamoras Bridge Company; Canton Railroad Company; Chicago & Calumet River Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, Receiver; Chicago & Illinois Western Railroad; Chicago & Kenosha Railway Company; Chicago & Southeastern Railway Company; Chicago, Lake Shore & Eastern Railway Company; Chicago, Milwaukee & Gary Railway Company; Chicago, North Shore & Milwaukee Railroad; Connellsville & Monongahela Railway Company; The Denison & Pacific Suburban Railway Company; Denver & Rio Grande Railroad Company and A. R. Baldwin, Receiver; Donora Southern Railroad Company; The Duluth & Iron Range Railroad Company; The Duluth & Northern Minnesota Railway Company; Duluth, Missabe & Northern Railway Company; Elgin, Joliet & Eastern Railway Company; Elwood, Anderson & Lapelle Railroad Company; Etna & Montrose Railroad Company; Hannibal Bridge Company; Houston & Brazos Valley Railway Company and G. C. Morris, Receiver; Hudson & Manhattan Railroad Company; Interstate Utilities Company; Johnstown & Stony Creek Railroad Company; Joliet & Blue Island Railway Company; The Lake Terminal Railroad Company; Louisiana Southern Railway Company; Louisville, New Albany & Corydon Railroad Company; McKeesport Connecting Railroad Company; The McKeesport Terminal Railroad Company; Manistique & Lake Superior Railroad Company; Meadville, Conneaut Lake & Linesville Railroad Company; Mercer Valley Railroad Company; Milwaukee, Bay View & Chicago Railroad Company; Monongahela Southern Railroad Company; Morristown & Erie Railroad Company; Newburgh & South Shore Railway Company; The New Castle & Lowell Railway Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railway Company; Northern Liberties Railway Company; Opelousas, Gulf & Northeastern Railway Company and W. H. Peterman, Receiver; The Orange & Northwestern Railroad Company; Pencoyd & Philadelphia Railroad Company; Pere Marquette Railway Company; Pittsburgh & Ohio Valley Railway Company; Pittsburgh, Allegheny & McKees Rocks Railroad Company; Pittsburg, Bessemer & Lake Erie Railroad Company; Pennsylvania Ohio Power & Light Company; Pennsylvania Ohio Electric Company; Prattsburgh Railway Corporation; The Rio Grande Southern Railroad Company; St. Clair

Terminal Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Brownsville & Mexico Railway Company; St. Louis Southwestern Railway Company of Texas; Sharon Connecting Railroad Company; The Sharon & New Castle Street Railway Company; The Sharon Railway; Slackwater Connecting Railroad Company; Southwestern Gas & Electric Company; The Texas & Pacific Railway Company and J. L. Lancaster, Receiver; The Texas & Pacific Railway Company and C. L. Wallace, Receiver; Trans-Mississippi Terminal Railroad Company; Union Railroad Company (Pennsylvania); Western Maryland Railway Company; Youghiogheny Northern Railway Company; The Youngstown & Northern Railroad Company; Arkansas Central Railroad Company; Coal Belt Electric Railroad; Fort Smith Suburban Railway Company; Iron Mountain Railroad of Memphis; Little Rock Junction Railway; Marion & Harrisburg Railway Company; Marion & Johnstown City Railway Company; Missouri Pacific Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; Natchez & Louisiana Railway Transfer Company; Natchez & Southern Railway Company; Union Railway Company (Memphis); International & Great Northern Railway Company and J. A. Baker, Receiver; Addison & Susquehanna Railroad Company; Ba...e & Chelsea Railroad Company; Belfast & Moosehead Lake Railroad Company; Boston & Albany Railroad Company (The New York Central Railroad Company, Lessee); Boston & Maine Railroad; Bridgeton and Saco River Railroad Company; The Buffalo Creek Railroad Company; Buffalo & Lake Erie Traction Company and G. Bullock, Receiver; The Central Union Depot & Railway Company of Cincinnati; Chester & Becket Railroad Company; Chicago, Kalamazoo & Saginaw Railway Company; The Cincinnati Northern Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Coos Valley Railroad Company; The Dayton Union Railway Company; Delaware, Susquehanna & Schuylkill Railroad Company; Detroit Terminal Railroad Company; Dexter & Newport Railroad Company; Dexter & Piscataquis Railroad Company; Eastern Maine Railroad Company; Eastern & Northern Railroad Company; European & North American Railway; Evansville, Indianapolis & Terre Haute Railway Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Fulton Chain Railway Company; Indiana Harbor Belt Railroad Company; Jersey City Belt Line Railroad Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; The Lackawanna & Montrose Railroad Company; Lake Erie, Alliance & Wheeling Railroad Company; The Lake Erie & Western Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Railroad Company of New Jersey; Louisville & Jeffersonville Bridge & Railroad Company; Loyalsock Railroad Company; Maine Central Railroad Company; The Michigan Central Railroad Company; Montpelier & Wells River Railroad; Newark Bay Railroad Company; New York & Ottawa Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; Ottawa & New York Railroad Company; The Peoria & Eastern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; The Portland & Ogdensburg Railway; Portland & Rumford Falls Railroad; Portland & Rumford Falls Railway; Portland Terminal Company; Raquette Lake Railway Company; Rumford Falls & Rangeley Lakes Railroad Company; Rutland Railroad Company; St. Johnsbury & Lake Champlain Railroad Company; St. Joseph, South Bend & Southern Railroad Company; St. Lawrence & Adirondack Railway Company;

Sandy River & Rangeley Lake Railroad; The Schuylkill & Lehigh Valley Railroad Company; The South Buffalo Railway Company; Sullivan County Railroad; The Sussex Railroad Company; The Syracuse, Binghamton & New York Railroad Company; The Toledo & Ohio Central Railway Company; The Toronto, Hamilton & Buffalo Railway Company; The Troy Union Railroad Company; Upper Coos Railroad Company (New Hampshire); Upper Coos Railroad Company (Vermont); Vancouver Traction Company; Vermont Valley Railroad; Wabash Railway Company; Wellsville, Coudersport & Pine Creek Railroad Company; West Shore Railroad Company (The New York Central Railroad Company, Lessee); York Harbor & Beach Railroad Company; The Zanesville & Western Railway Company; Benton & Fairfield Railroad Company; Moshassuck Valley Railroad Company; The Bedford Stone Railway Company; Bayfield Transfer Railway Company; Atlantic & East Coast Terminal Company; Butte, Anaconda & Pacific Railway Company; The Nevada Central Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Des Moines Union Railway Company; Escanaba & Lake Superior Railroad Company; Bush Terminal Railroad Company; Genesee & Wyoming Railroad Company; Hoboken Manufacturers Railroad Company; Maryland & Pennsylvania Railroad Company; South Brooklyn Railway Company; American Pneumatic Service Company; Arizona Eastern Railroad Company; Alamogordo & Sacramento Mountain Railway Company; Burrs Ferry, Browndel & Chester Railway Company; Central Pacific Railway Company; Columbia & Palousa Railroad Company; Columbia River & Oregon Central Railroad Company; Columbia Southern Railway Company; Colusa & Hamilton Railroad Company; Dawson Railway Company; Des Chutes Railroad Company; El Paso & Rock Island Railway Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; Groveton, Lufkin & Northern Railway Company; Hanford & Summit Lake Railway Company; Hearne & Brazos Valley Railroad Company; Houston & Shreveport Railroad Company; The Houston East and West Texas Railway Company; Houston & Texas Central Railroad Company; Idaho Northern Railroad Company; Idaho Southern Railroad Company; Inter-California Railway Company; Lake Creek & Coeur d'Alene Railroad Company; Lake Charles & Northern Railroad Company; Lake Tahoe Railway & Transportation Company; The Leavenworth Depot & Railroad Company; Los Angeles & Pacific Company; Louisiana Western Railroad Company; Malheur Valley Railroad Company; Michigan East & West Railway Company and E. Ford, Receiver; Minneapolis & Rainy River Railway Company; Mojave & Bakersfield Railroad Company; Morenci Southern Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; New Mexico Central Railroad Company; New Mexico & Arizona Railroad Company; The Northern Pacific Terminal Company of Oregon; Northwestern Railroad Company; Northwestern Pacific Railroad Company; Ogden Union Railway & Depot Company; Oregon & Washington Railroad Company; Oregon & California Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Oregon, Washington & Idaho Railroad Company; Pacific Electric Railway Company; Payette Valley Railroad Company; Peninsular Railway Company (of California);

Phoenix & Eastern Railway Company; Porterville & Northeastern Railway Company; Richmond Belt Railway; Sabine & Northern Railroad Company; The St. Joseph & Grand Island Railway Company; St. Joseph Terminal Railroad Company; Southern Pacific Company; San Diego & Arizona Railway Company; Southern Pacific Railroad Company; Southern Pacific Terminal Company; South Pacific Coast Railway Company; Spokane Union Depot Company; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Tucson & Nogales Railroad Company; Tucson, Cornelia & Gila Bend Railway Company; Umatilla Central Railway Company; Union Pacific Railroad Company; Visalia Electric Railroad Company; Walla Walla & Columbia River Railroad Company; Willamette Pacific Railway Company; Yakima Valley Transfer Company (Electric); Oahu Railway & Land Company; Cheswick & Harmar Railroad Company; Ferdinand Railroad Company; South Shore Railroad Company; Louisiana & Arkansas Railway Company; Kansas City Northwestern Railroad Company and J. M. Lee, Receiver; San Antonio & Aransas Pass Railway Company; Hannibal Connecting Railroad Company; Northampton & Bath Railroad Company; The Great Western Railway Company; Southwest Missouri Railway Company; Amsterdam, Chuctanunda & Northern Railroad Company; Alton & Southern Railroad Company; Bauxite & Northern Railway Company; Massena Terminal Railroad Company; Manufacturers Junction Railway Company; Virginia & Truckee Railway; Hawaii Consolidated Railway, Limited; Kahului Railroad Company; Kauai Railway Company; The Kennebec Central Railroad Company; Pittsburgh & Allegheny River Railroad Company; Muncie & Western Railroad Company; Union Traction Company of Indiana; Union Street Railway Company; Albany Southern Railroad Company; Western New York & Pennsylvania Traction Company; The Hill City Railway Company; Fort Worth Belt Railway Company; Union Stock Yards Company of Omaha, Limited; Chicago, Ottawa & Peoria Railway Company; Peoples Traction Company; Cairo & St. Louis Railway Company; St. Louis Electric Bridge Company; St. Louis Electric Terminal Railway Company; Bloomington, Decatur & Champaign Railroad; Danville, Urbana & Champaign Railway Company; Illinois Central Traction Company; St. Louis, Springfield & Peoria Railroad; The Delaware, Lackawanna & Western Railroad Company; Iberia & Vermilion Railroad Company;

The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake & Ohio Northern Railway Company; Cincinnati, Interterminal Railroad Company; Covington, Cincinnati, Elevated Railroad & Transfer & Bridge Company; The Hocking Valley Railway Company; Piney River & Paint Creek Railroad Company; Amador Central Railroad Company; Arizona & Swansea Railroad Company; Ashland, Odanah & Marengo Railway Company; Asherton & Gulf Railway Company; Augusta Railroad Company; Bamberger Electric Railroad Company; Black Bayou Railroad Company; Brookings & Peach Orchard Railroad Company; Caddo & Choctaw Railroad Company; Cassville & Exeter Railway Company; Central California Traction Company; Charles City Western Railway Company; Chicago, Harvard & Geneva Lake Railway Company; Christie & Eastern Railroad Company; Colfax Northern Railway Company; Dardanelle & Russellville Railroad Company; Dayton-Goose Creek Railway Company; The Dayton, Toledo & Chicago Railway Company; Doniphan, Kensett & Searcy Railway; El Dorado & Wesson Railway Company; E. V. Rideout Company; Fairchild & Northeastern Railway; Fordyce & Princeton Railroad Company;

Fort Dodge, Des Moines, & Southern Railroad Company; Fort Smith, Subiaco & Rock Island Railroad Company; The Franklin & Abbeville Railway Company; Freeo Valley Railroad Company; Fredericksburg & Northern Railway Company; Fresno Interurban Railway Company; Gales Creek & Wilson River Railroad; Gulf & Northern Railway Company; The Garden City Western Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, Receiver; Hillsboro & Northeastern Railway Company; Interurban Railway Company; Jonesboro, Lake City & Eastern Railroad Company; Kinder & Northwestern Railway Company; The Kansas City Railways Company and F. W. Fleming, Receiver; The Kansas City Railways Company and F. M. Wilson, Receiver; The Kansas & Oklahoma Railway Company; L'Anguille River Railway Company; Leavenworth & Topeka Railroad Company; Little Rock, Maumelle & Western Railroad Company; Louisiana & Northwest Railroad Company and E. R. Bernstein, Receiver; Louisiana & Pacific Railway Company; The Lowville & Beaver River Railroad Company; Mascot & Western Railway Company; Memphis, Dallas & Gulf Railroad Company and M. Walsh, Receiver; Midland Continental Railroad; Minneapolis, Red Lake & Manitoba Railway Company; Milwaukee, Chicago & Michigan City Line; Minnesota Northwestern Electric Railway Company; Manchester & Oneida Railway Company; Mississippi & Western Railroad Company; Merchants Transportation Company; Mississippi Eastern Railway Company; Missouri Southern Railroad Company; Monroe & Texas Railway Company; Montana Western Railway Company; Moscow, Camden & San Augustine Railway Company; Muscatine North & South Railway Company and M. Dailey, Receiver; Muscatine, Burlington & Southern Railroad Company; Oakdale & Gulf Railway Company; Oberlin, Hampton & Eastern Railroad Company; Ouachita & Northwestern Railroad Company; Pacific Coast Railway Company; Pacific Coast Railroad Company; Paragould-Memphis Railroad Company; Phoenix Railway Company of Arizona; The Prescott & Northwestern Railroad Company; Rockingham Railroad Company; Roscoe, Snyder & Pacific Railway Company; Salem, Winona & Southern Railroad Company; The Saline Northern Railroad Company and H. C. Brent, Receiver; The Salina Northern Railroad Company and P. W. Goebel, Receiver; Sand Springs Railway Company; San Antonio Southern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; Tabor & Northern Railway Company; Texas City Terminal Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas Southeastern Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; Trinity Valley & Northern Railway Company; Washington Western Railway Company; Woodworth & Louisiana Central Railway Company; Union Traction Company of Kansas; Kansas, Oklahoma & Gulf Railway Company; Missouri, Oklahoma & Gulf Railway Company of Texas; Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Louisville, Henderson & St. Louis Railway Company; The Kansas City Connecting Railroad Company; Kansas City Stock Yards Company; Oklahoma National Stock Yards Company; St. Louis National Stock Yards; Aberdeen & Rockfish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; Alabama, Florida & Gulf Railroad Company; Alabama, Tennessee & Northern Railroad Corporation; Alabama & Northwestern Railroad Company; Alcolu Railroad Company; The Akron, Canton & Youngstown Railroad Company; Ashley, Drew & Northern Railway; Apalachian Railway

Company; Arcata & Mad River Railroad Company; Arizona Southern Railroad Company; The Arizona & New Mexico Railway Company; Arkansas & Louisiana Missouri Railway Company; Athens Terminal Company; Atlanta & St. Andrews Bay Railway Company; Atlantic & Carolina Railroad Company; Atlantic Northern Railway Company; Atlantic, Waycross & Northern Railroad Company; Augusta Northern Railway; Bartlett Western Railway Company; Beaver, Meade & Englewood Railroad Company; Bennettsville & Cheraw Railroad Company; Bingham & Garfield Railway Company; Birmingham & Northwestern Railway Company; Birmingham & Southeastern Railway Company and W. M. Blount and John T. Cochrane, Receivers; Boyne City, Gaylord & Alpena Railroad Company; Butler County Railroad Company; Cache Valley Railroad Company; California Central Railroad Company; California Southern Railroad Company; California Western Railroad & Navigation Company; Cambria & Indiana Railroad Company; Cape Girardeau Northern Railway Company and J. W. Fristoe, Receiver; Campbells Creek Railroad Company; The Carolina & Yadkin River Railway Company; Craig Mountain Lumber Company Railway; Cedar Rapids & Iowa City Railway; Cement, Tolenas & Tidewater Railway; Charlotte Harbor & Northern Railway Company; Chesapeake Western Railroad Company; The Cimarron & Northwestern Railway Company; Cincinnati, Georgetown & Portsmouth Railroad; Cliffside Railroad Company; The Colorado-Kansas Railway Company; Coudersport & Port Allegany Railroad Company; Cowlitz, Chehalis & Cascade Railway; Cumberland & Manchester Railroad Company; Danville & Mount Morris Railroad Company and A. S. Murray, Receiver; De Kalb & Western Railroad Company; Dents Run Railroad Company; Denver & Intermountain Railway Company; DeQueen & Eastern Railroad Company; Durham & Southern Railway Company; East Erie Commercial Railroad; East Jersey Railroad & Terminal Company; East Tennessee & Western North Carolina Railroad Company; East Texas & Gulf Railway Company; Eastern Kentucky Railway Company; Edgemoor & Manetta Railway Company; Emmitsburg Railroad Company; Ettrick & Northern Railroad Company; Elkin & Allegheny Railroad Company; Federal Valley Railroad Company; Felicity & Bethel Railroad; Fellsmere Railroad; Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Fourche River Valley & Indian Territory Railway Company; Frankfort & Cincinnati Railway Company; Gainesville & Northwestern Railroad Company; Gainesville Midland Railway Company; Garyville Northern Railroad Company; Georgia Northern Railway Company; Gideon & North Island Railroad Company;

Glenmora & Western Railway Company; Grand Rapids Terminal Belt Railway Company; Grasse River Railroad Corporation; Great Southern Railroad Company; Greene County Railroad Company; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company; Hampton & Branchville Railroad Company; Hardwick & Woodbury Railroad Company; Holton Interurban Railway Company; Iowa Southern Utilities Company; Ironton Railroad Company; Kansas City, Kaw Valley & Western Railway Company; Kansas City, Leavenworth & Western Railway Company; Kellys Creek & Northwestern Railroad Company; Kentwood & Eastern Railway Company; Kentwood, Greensburg & Southwestern Railroad Company; Kosciusko & Southeastern Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Jamestown, Westfield & Northwestern Railroad Company; Jefferson & Northwestern Railway Company;

Joplin & Pittsburg Railway Company; La Crosse & Southeastern Railway Company; Lake Erie, Franklin & Clarion Railroad Company; The Lakeside & Marblehead Railroad Company; Laurel Fork Railway Company; Lawndale Railway & Industrial Company; The Lewiston, Nezperce & Eastern Railroad Company; Ligonier Valley Railroad Company; Linville River Railway Company; Little River Railroad Company of Tennessee; Live Oak, Perry & Gulf Railroad Company; McCloud River Railroad Company; Manitou & Pikes Peak Railroad Company; Marion & Eastern Railroad Company; Maxton, Alma & Southbound Railroad Company; Meridian & Memphis Railway Company; Middletown & Unionville Railroad Company; Minnesota, Dakota & Western Railway Company; Montana, Wyoming & Southern Railroad Company; Morehead & North Fork Railroad Company; The Motley County Railway Company; Mount Jewett, Kinzua & Riterville Railroad Company; Natchez, Columbia & Mobile Railroad Company; The Nevada Northern Railway Company; Nevada-California-Oregon Railway; Nevada County Narrow Gauge Railroad Company; Newaukum Valley Railroad Company; New Castle & Ohio River Railway Company; New Jersey, Indiana & Illinois Railroad Company; The New Mexico Midland Railway Company; New Orleans & Lower Coast Railroad Company; Northeast Oklahoma Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New York Dock Railway; The New Park & Fawn Grove Railroad Company; Nezperce & Idaho Railroad Company; North Louisiana & Gulf Railroad Company; Norwood & St. Lawrence Railroad Company; Ocilla Southern Railroad Company and M. W. Garbutt, Receiver; Ocilla Southern Railroad Company and J. A. J. Henderson, Receiver; Ocklawaha Valley Railroad Company and H. S. Cummings, Receiver; Okmulgee Northern Railway Company; Oneida & Western Railroad Company; Oregon Pacific & Eastern Railway Company; Pacific & Idaho Northern Railway Company; Wyoming Railway Company; Pearl River Valley Railroad Company; Pelham & Havana Railroad Company; The Pickens Railroad Company; Pine Bluff & Northern Railway Company; Pittsburgh & Susquehanna Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; Puget Sound & Cascade Railway Company; Rahway Valley Company, Lessee; Randolph & Cumberland Railway Company; Ray & Gila Valley Railroad Company; Red River & Gulf Railroad Company; Roanoke Railway Company; Roaring Fork Railroad Company; Rock Island Southern Railway Company and T. H. Beacon, Receiver; Rock Island Southern Railway Company and W. T. Abbott, Receiver; Rome & Northern Railroad Company and D. B. Carson, Receiver; Sacramento Northern Railroad; Salt Lake & Utah Railroad Company; St. Louis & Hannibal Railroad Company; San Benito & Rio Grande Valley Railway Company; San Joaquin & Eastern Railroad Company; San Luis Central Railroad Company; The San Luis Southern Railway Company; Saratoga & Encampment Railroad Company; Shearwood Railway Company; Sierra Railway Company of California; Skaneateles Railroad Company; South Manchester Railroad Company; Stanley, Merrill & Phillips Railway Company; The Sterling Mountain Railway Company; Springfield Electric Railway Company; Sugar Land Railway Company; Talbotton Railroad Company; Tampa & Jacksonville Railway Company; Tennessee & North Carolina Railway Company; Texas, Oklahoma & Eastern Railroad Company; Tooele Valley Railway Company; Townsville Railroad Company; Trinity Valley Southern Railroad Company; The Tuckerton Railroad Company; Union & Glenn Springs Railroad Company; Ursina & North Fork Railway Company;

Valdosta, Moultrie & Western Railway Company and R. P. Murray, Receiver; Virginia & Carolina Southern Railroad Company; The Wabash, Chester & Western Railroad Company; Walla Walla Valley Railroad Company; Warren & Ouachita Valley Railway Company; Waterloo, Cedar Falls & Northern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Waterville Railway Company; Wautauga & Yadkin River Railroad Company and W. J. Grandin, Receiver; Waycross & Western Railroad Company; West Virginia Northern Railroad Company; White River Railroad Company; Wildwood & Delaware Bay Short Line Railroad Company; Wichita Falls & Southern Railway Company; The Winfield Railroad Company; Wyandotte Southern Railroad Company; Yosemite Valley Railroad Company; The Youngstown & Ohio River Railroad Company; Yreka Railroad Company; Electric Short Line Railway Company; Leesville, Slagle & Eastern Railway Company; Santa Maria Valley Railroad Company; Natchez, Urania & Ruston Railway Company; The Atchison, Topeka & Santa Fe Railway Company; Baton Rouge, Hammond & Eastern Railroad Company; The Arkansas Western Railway Company; Blue Island Railroad Company; Beaumont Wharf & Terminal Company; Big Fork & International Falls Railway Company; Big Fork & Northern Railway Company; Chicago, Memphis & Gulf Railroad Company; The California, Arizona & Santa Fe Railway Company; Canton, Aberdeen & Nashville Railroad Company; Camas Prairie Railroad Company; Chicago, St. Louis & New Orleans Railroad Company; The Chicago & Alton Railroad Company; Chicago Junction Railway Company; The Chicago River & Indiana Railroad Company; Chicago, South Bend & Northern Indiana Railway Company; Concho, San Saba & Llano Valley Railway Company; Dubuque & Sioux City Railroad Company; Eastern Railway Company of New Mexico; Dunleith & Dubuque Bridge Company; El Paso Union Passenger Depot Company; Gilmore & Pittsburgh Railway Company; The Grand Canyon Railway Company; Gulf & Interstate Railway Company of Texas; Gulf, Colorado & Santa Fe Railway Company; Helm & Northwestern Railroad Company; Houston Belt & Terminal Railway Company; Illinois Central Railroad Company; The Joliet & Chicago Railroad Company; Joplin Union Depot Company; The Kansas City Southern Railway Company; Los Angeles & Salt Lake Railroad Company; Kansas City, Shreveport & Gulf Terminal Company; Kansas City Terminal Railway Company; Louisiana & Missouri River Railroad Company; Mason City & Clear Lake Railroad Company; The Maywood & Sugar Creek Railway Company; Minnesota & International Railway Company; Missouri, Kansas & Texas Railway Company and C. E. Schaff, Receiver; The Missouri, Kansas & Texas Railway Company of Texas and C. E. Schaff, Receiver; New Jersey & Staten Island Ferry Company; Northern Pacific Railway Company; North Yakima & Valley Railway Company; The Ohio Electric Railway Company and B. J. Jones, Receiver; Oil Fields & Santa Fe Railway Company; Omaha Bridge & Terminal Railway Company; Pacific Northwest Traction Company; Panhandle & Santa Fe Railway Company; The Pecos & Northern Texas Railway Company; Pecos River Railroad Company; Phillipsburgh Transit Company; Port Townsend Southern Railroad Company; The Poteau Valley Railroad Company; Rio Grande, El Paso & Santa Fe Railroad Company; Rio Grande & El Paso Railroad Company; Rocky Mountain & Santa Fe Railway Company; Scottdale Connecting Railroad Company; The South Chicago Railroad Company; South Plains & Santa Fe Railway Company; The Sunflower & Eastern Railway Company; Southern Kansas Railway Company of Texas;

Southern Michigan Railway Company; Sunset Railway Company; St. Louis, Belleville & Southern Railway Company; Texas & Gulf Railway Company; Texarkana & Fort Smith Railway Company; Union Depot Company of Kansas City, Missouri; The Yazoo & Mississippi Valley Railroad Company; The Wichita Falls & Northwestern Railroad Company and C. E. Schaff, Receiver; Chicago, West Pullman & Southern Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; Deering Southwestern Railway; Illinois Northern Railway Company; The Owasco River Railway; Sidell & Olney Railroad Company;

The Springfield Terminal Railway Company; Wisconsin & Northern Railway Company; Sumter & Choctaw Railway Company; The Uintah Railway Company; Brownstone & Middletown Railroad Company; The Buffalo Creek & Gauley Railroad Company; Fore River Railroad Corporation; Patapsco & Black River Railroad Company; Philadelphia, Bethlehem & New England Railroad Company; Steelton & Highspire Railroad Company; Chestnut Ridge Railway Company; Bullfrog Goldfield Railroad Company; Death Valley Railroad Company; Depue & Northern Railroad Company; Mineral Point & Northern Railway Company; San Francisco & Oakland Terminal Railway Company; Tonopah & Tidewater Railroad Company; Akron Union Passenger Depot Company; Baltimore & New York Railroad Company; Baltimore & Ohio & Chicago Railroad Company (Illinois); Baltimore & Ohio & Chicago Railroad Company (Ohio & Indiana); Baltimore & Ohio Chicago Terminal Railroad Company; The Baltimore & Ohio Connecting Railroad Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Railroad Company in Pennsylvania; The Baltimore & Ohio Southwestern Railroad Company; The Baltimore & Philadelphia Railroad Company; The Baltimore Belt Railroad Company; Belington & Northern Railroad Company; Capitol Traction Company; Coal & Coke Railway Company; The Confluence & Oakland Railroad Company; The Dayton & Union Railroad Company; Elwood Short Line Railroad Company; Fairmont, Morgantown & Pittsburgh Railroad Company; Hamilton Belt Railway Company; Hampshire Southern Railway Company; The Hardmans Branch Railroad Company; Indian Creek Valley Railway Company; Lehigh & New England Railroad Company; The Lancaster, Cecil & Southern Railroad Company; Little Kanawha Railroad Company; The Metropolitan Southern Railroad Company; Millers Creek Railroad Company; Morgantown & Kingwood Railroad Company; Ohio & Little Kanawha Railroad Company; Pittsburgh Junction Railroad Company; Pittsburgh Western Railroad Company; The Quemahoning Branch Railroad Company; The Sandy Valley & Elkhorn Railway Company; Sandyville & Waynesburg Railroad Company; The Schuylkill River & East Side Railroad Company; The Sharpsville Railroad Company and G. K. McIlvain, Receiver; Smithfield & Masontown Railroad Company; The Staten Island Railway Company; The Staten Island Rapid Transit Railway Company; The Tylersdale Connecting Railroad Company; The Valley Railroad Company of Virginia; Washington & Western Maryland Railroad Company; Washington County Railroad Company; Washington Run Railroad Company; The Washington Terminal Company; The Wheeling, Pittsburgh & Baltimore Railroad Company; The Winchester & Potomac Railroad Company; The Winchester & Strausburg Railroad Company; The Albana Railroad Bridge Company; Belle Fourche Valley Railway Company; Birmingham Belt Railroad Company; Chicago & North Western Railway Company; Chicago, Rock Island & El Paso Railway Com-

pany; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Gulf Railway Company; Brownwood North & South Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Choctaw, Oakland & Gulf Railroad Company; Depue, Ladd & Eastern Railway Company; Des Plaines Valley Railway Company; Fort Worth & Rio Grande Railway Company; James River Valley & Northwestern Railway Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City, Fort Scott & Memphis Railway Company; Keokuk & Des Moines Railway Company; Kansas City, Memphis & Birmingham Railroad Company; Macoupin County Railway Company; Manitowoc, Green Bay & Northwestern Railway Company; Milwaukee State Line Railway Company; Milwaukee, Sparta & Northwestern Railway Company; Minneapolis Eastern Railway Company; Missouri Valley & Blair Railway & Bridge Company; Paris & Great Northern Railroad Company; Peoria & Bureau Valley Railroad Company; Peoria Railway Terminal Company; Princeton & Western Railway Company; Quanah, Acme & Pacific Railway Company; Rock Island & Dardenelle Railway Company; Rock Island, Arkansas & Louisiana Railroad Company; Rock Island, Stuttgart & Southern Railway Company; St. Louis-San Francisco Railway Company; St. Louis, Kansas City & Colorado Railroad Company; The St. Louis, Peoria & Northwestern Railway Company; St. Paul & Kansas City Short Line Railroad Company; St. Louis, San Francisco & Texas Railway Company; St. Paul & Sioux City Railroad Company; St. Paul Eastern Grand Trunk Railway Company; Sioux City Bridge Company; Sligo & Eastern Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Winona & St. Peter Railroad; Wolf River Valley Railway Company; Wyoming & Northwestern Railway Company; The Interstate Railroad Company; Cairo & Kanawha Railway Company; Abilene & Southern Railway Company; Adirondack & St. Lawrence Railroad Company; The Alabama Northern Railway Company; Allegheny & South Side Railway Company; Aransas Harbor Terminal Railway Company; Atlanta, Birmingham & Atlantic Railway Company; Buffalo, Rochester & Pittsburgh Railway Company; Carrollton & Worthville Railroad Company; Central Valley Railroad Company; Chattahoochee Valley Railway Company; Chicago, Indianapolis & Louisville Railway Company; The City Electric Railway Company; The Colorado & Wyoming Railway Company; The Crystal River Railroad Company; Detroit & Lake St. Clair Railway; Detroit, Almont & Northern Railroad; Detroit, Jackson & Chicago Railway; Detroit, Monroe & Toledo Short Line Railway; Detroit, Mount Clemens & Marine City Railway; Detroit United Railway; Evansville & Southern Indiana Traction Company; The Grand Rapids, Grand Haven & Muskegon Railway Company; Hoosac Tunnel & Wilmington Railroad Company; Indianapolis & Cincinnati Traction Company; Flemingsburg & Northern Railroad Company; Indianapolis, Columbus & Southern Traction Company; Kentucky Midland Railroad Company; Lackawanna & Wyoming Valley Railroad Company; Laurel Railway Company; Manistee & Repton Railroad; The Midland Terminal Railway Company; Pascagoula Street Railway & Power Company; The Port Huron & St. Clair & Marine City Railway Company; Public Utilities Company; Rapid Railroad Company; The Rapid Railway Company; Rapid Railway System; Rural Valley Railroad; Scranton & Northeastern Railroad Company; Toledo & Indiana Traction Company; Wilkes-Barre Railroad Company; Winona Interurban Railway Company and C. J. Munton, Receiver; Zwolle & Eastern Railway Company; American Electric Railway

Association; The Brimstone Railroad & Canal Company; New York, Ontario & Western Railway Company; The Rhode Island Company and Z. W. Bliss, Receiver; The Rhode Island Company and T. H. Green, Receiver; The Rhode Island Company and F. H. Swan, Receiver; Woodstock Railway Company; The Canadian Pacific Railway Company; Delray Connecting Railroad Company; The Dominion Atlantic Railway Company; The Duluth, South Shore & Atlantic Railway Company; Garden Bay Railway Company; Esquimalt & Nanaimo Railway Company; Houlton Branch Railroad Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; Newport & Richford Railroad Company; Spokane International Railway Company; Tonopah & Goldfield Railroad Company; Bangor & Aroostook Railroad Company; Big Sandy & Cumberland Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Colorado & Southeastern Railroad Company; The Cuyahoga Valley Railway Company; Galesburg & Great Eastern Railroad Company; Galveston Wharf Company; Intermountain Railway Company; LaSalle & Bureau County Railroad Company; Marion & Rye Valley Railway Company; The Michigan & Chicago Railway Company; Michigan Railroad Company; Michigan United Railways Company; Mississippi River & Bonne Terre Railway; Mount Hope Mineral Railroad Company; Niagara Junction Railway Company; Northwestern Coal Railway Company; Smoky Mountain Railway Company; Sugar Pine Railway Company; Utah Railway Company; Virginia Southern Railroad Company; Wellington & Powellsville Railroad Company; American Railroad Company of Porto Rico; The Pittsburgh & West Virginia Railway Company; West Side Belt Railroad Company; Chicago Short Line Railway Company; The Kanawha Central Railway Company; The Paterson & Hudson River Railroad Company; The Paterson & Ramapo Railroad Company; Union Railroad Company; Arlington Railroad Company; Arnot & Pine Creek Railroad Company; Bath & Hammondsport Railroad Company; Bergen & Dundee Railroad Company; Bergen County Railroad Company; Central Vermont Railway Company; Champlain & St. Lawrence Railroad Company; Chicago & Erie Railroad Company; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company; Conesus Lake Railroad Company; The Detroit & Huron Railway Company; Detroit, Grand Haven & Milwaukee Railway Company; Docks Connecting Railway Company; Elmira State Line Railroad Company; The Erie & Black Rock Railroad Company; Erie & Wyoming Valley Railroad Company; Erie Railroad Company; Erie Terminal Railroad Company; Eriton Railroad Company; The Grand Trunk Milwaukee Car Ferry Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Hackensack & Lodi Railroad Company; International Bridge Company; Jefferson Railroad Company; Lodi Branch Railroad Company; Long Dock Railroad Company; Macopin Railroad Company; Michigan Air Line Railway, Middletown & Crawford Railroad Company; New Jersey & New York Extension Railroad Company; New Jersey & New York Railroad Company; New York & Greenwood Lake Railway Company; New York, Lake Erie & Western Coal & Railroad Company; New York, Susquehanna & Western Railroad Company; Northern Railroad Company of New Jersey; Nypano Railroad Company; The Paterson, Newark & New York Railroad Company; Passaic & New York Railroad Company; Pontiac, Oxford & Northern Railroad Company; Rochester & Genesee Valley Railroad Company; The St. Clair Tunnel Company; Susquehanna Connecting Rail-

road Company; Tioga Railroad Company; Toledo, Saginaw & Muskegon Railway Company; United States & Canada Railroad Company; Wilkes-Barre & Eastern Railroad Company; Butte Electric Railway Company; St. John & Ophir Railroad Company; Verde Tunnel & Smelter Railroad Company; Altoona Northern Railroad Company; Virginia Blue Ridge Railway Company; Abilene & Northern Railway Company; Central New England Railway Company; Chicago, Burlington & Quincy Railroad Company; The Colorado & Southern Railway Company; The Colorado Springs & Cripple Creek District Railway Company; Davenport, Rock Island & Northwestern Railway Company; The Denver Union Terminal Railway Company; Duluth & Superior Bridge Company; Duluth Terminal Railway Company; Farmers Grain & Shipping Company; The Fort Worth & Denver City Railway Company; The Great Northern Railway Company; Inland Empire Railroad Company; Lake Superior Terminal & Transfer Company; Minneapolis Western Railway Company; New York & Stamford Railway Company; The New York, New Haven & Hartford Railroad Company; New York, Westchester & Boston Railway Company; Oregon Electric Railway Company; Quincy, Omaha & Kansas City Railroad Company; Spokane & Eastern Railway & Power Company; Spokane, Portland & Seattle Railway Company; Stamford & Northwestern Railway Company; The Trinity & Brazos Valley Railway Company and J. A. Hulen, Receiver; United Railway Company; Watertown & Sioux Falls Railway Company; Wichita Falls & Oklahoma Railway Company; Wichita Valley Railroad Company; The Wichita Valley Railway Company; Winona Bridge Railway Company; The Colorado, Wyoming & Eastern Railway Company; New Orleans Great Northern Railroad Company; Mississippi Central Railroad Company; Gulf & Ship Island Railroad Company; The Maryland Electric Railways Company; The Akron & Barberton Belt Railroad Company; The Atchison & Eastern Bridge Company; Baltimore, Chesapeake & Atlantic Railway Company; Calumet Western Railway Company; Cherry Tree & Dixonville Railroad Company; Chicago, Indiana & Eastern Railway Company; Cincinnati, Richmond & Fort Wayne Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cleveland & Pittsburgh Railroad Company; The Connecting Terminal Railroad Company; The Cumberland Valley Railroad Company; Dayton, Lebanon & Cincinnati Railroad & Terminal Company; Englewood Connecting Railway Company; Erie & Pittsburgh Railroad Company; Grand Rapids & Indiana Railway Company; The Indianapolis Union Railway Company; The Little Miami Railroad Company; The Long Island Railroad Company; The Lorrain, Ashland & Southern Railroad Company; Manufacturers Railway Company; Maryland, Delaware & Virginia Railway Company; Massillon & Cleveland Railroad Company; The Monongahela Railway Company; New York, Philadelphia & Norfolk Railroad Company; Norfolk & Portsmouth Belt Line Railroad Company; The Ohio Connecting Railway Company; The Ohio River & Western Railway Company; Pennsylvania Company; The Pennsylvania Railroad Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; Pittsburgh, Fort Wayne & Chicago Railway Company; The Pittsburgh, Ohio Valley & Cincinnati Railroad Company; Pittsburgh, Wheeling & Kentucky Railroad Company; The Pittsburgh, Youngstown & Ashtabula Railway Company; Rosslyn Connecting Railroad Company; South Chicago & Southern Railroad Company; Terre Haute & Peoria Railroad Company; Toledo, Columbus & Ohio River Railroad Company; Toledo, Peoria & Western Railway

Company and E. N. Armstrong, Receiver; Union Railroad Company of Baltimore; Waynesburg & Washington Railroad Company; Western New York & Pennsylvania Railway Company (New Castle Branch); West Jersey & Seashore Railroad Company; Wheeling Terminal Railway Company; Youngstown & Ravenna Railroad Company; Chesapeake Beach Railway Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company; Lykens Valley Railroad & Coal Company; Bay Terminal Railroad Company; Beaver Valley Railroad Company; Delaware River & Union Railroad Company; Alexandria & Western Railway Company; Cornwall Railroad Company; Franklin & Pittsylvania Railroad Company; Gulf, Florida & Alabama Railroad Company and J. T. Steele, Receiver; Lufkin, Hemphill & Gulf Railroad Company; Montour Railroad Company; Pecos Valley Southern Railway Company; Peoria & Pekin Union Railway Company; Potato Creek Railroad Company; St. Louis, El Reno & Western Railway Company and A. L. Mills, Receiver; The Savannah & Southern Railway Company; Silverton Northern Railroad Company; Tuscarora Valley Railroad Company; Silverton Railway Company; Statenville Railway Company; Ahnapee & Western Railway Company; Arcadia & Betsey River Railway Company; Bellefonte Central Railroad Company; Bevier & Southern Railroad Company; Bloomsburg & Sullivan Railroad Company; Central West Virginia & Southern Railroad Company; Clarendon & Pittsford Railroad Company; Copper Range Railroad Company; Delaware & Northern Railroad Company; Duluth & Northwestern Railroad Company; Georgia Southwestern & Gulf Railroad Company; Grafton & Upton Railroad Company; Green Bay & Western Railroad Company; Illinois Terminal Railroad Company; Kishocoquillas Valley Railroad Company; Kewaunee, Green Bay & Western Railroad Company; Lake Champlain & Moriah Railroad Company; Madison Southern Railway Company; Nelson & Albemarle Railway Company; Ontonagon Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company and H. S. Hastings, Receiver; Tama & Toledo Railroad Company; Texas Short Line Railway Company; Unadilla Valley Railway Company; Union Transportation Company; Valley Railroad Company of West Line, Pa.; Waupaca-Green Bay Railroad Company; Williamsport & North Branch Railway Company and E. Bailey, Receiver; Bay Point & Clayton Railroad Company; Clarion River Railway Company; Dry Fork Railroad Company; Kersey Railroad Company; Neame, Carson & Southern Railroad Company; Ohio & Kentucky Railway Company; Stewartstown Railroad Company; Enterprise Railway Company; Escambia Railway; Hickory Valley Railroad Company; Hiwanee & Tombigbee Railroad Company; Kingston Railroad Company; Louisiana & Pine Bluff Railway Company; Malvern & Freeo Valley Railway Company; Mansfield Railway & Transportation Company; The Nacogdoches & Southeastern Railroad Company; Shubuta & Southwestern Railroad Company; Tifton Terminal Company; Tyronza & St. Francis River Railway Company; Wisconsin & Northwestern Railway;

Atlantic City Railroad Company; Catasauqua & Fogelsville Railroad Company; The Central Railroad Company of New Jersey; Chester & Delaware River Railroad Company; The Dover & Rockaway Railroad Company; The Gettysburg & Harrisburg Railway Company; Middletown & Hummelstown Railroad Company; The New York & Long Branch Railroad Company; The Northeast Pennsylvania Railroad Company; The Ogden Mine Railroad Company; Perkiomen Railroad Company; The Philadelphia & Chester Valley Railroad Company; Philadelphia & Reading Railway Company; Philadelphia

Belt Line Railroad Company; The Philadelphia, Newtown & New York Railroad Company; Pickering Valley Railroad Company; The Port Reading Railroad Company; Raritan River Railroad Company; Reading & Columbia Railroad Company; The Rupert & Bloomsburg Railroad Company; Stony Creek Railroad Company; The Tamaqua, Hazelton & Northern Railroad Company; The Williams Valley Railroad Company; Intercolonial Railway of Canada; Midland Valley Railroad Company; Canadian Northern Railway Company; New London Northern Railroad Company; Duluth, Winnipeg & Pacific Railway Company; Halifax Southwestern Railway Company; Sault Ste. Marie Bridge Company; West River Railroad Company; Alaska Northern Railway Company; Tanana Valley Railroad Company; The Due West Railway Company; Washington Virginia Railway Company; Indiana Northern Railway Company; Aliquippa & Southern Railroad Company; The Monongahela Connecting Railroad Company; Kentucky & Tennessee Railway; Lancaster & Chester Railway Company; Alabama & Mississippi Railroad Company; Ware Shoals Railroad; Georgia & Florida Railway and J. F. Lewis, Receiver; Georgia & Florida Railway and L. M. Williams, Receiver; Georgia & Florida Railway and W. R. Sullivan, Receiver; Tennessee Railroad Company and J. N. Baker and H. G. Fowler, Receivers; Massachusetts Northeastern Street Railway Company; Bonlee & Western Railway Company; Atlantic & Western Railroad Company; Copper River & Northwestern Railway Company; Magma Arizona Railroad Company; New York & Pennsylvania Railway Company; Bangor Railway & Electric Company; Cumberland County Power & Light Company; Chicago Great Western Railroad Company; Cooperstown & Charlotte Valley Railroad Company; The Delaware & Hudson Company; Greenwich & Johnsonville Railway Company; Hudson Valley Railway Company; The Leavenworth Terminal Railway and Bridge Company; The Lorain & West Virginia Railway Company; Napierville Junction Railway Company; The Quebec, Montreal & Southern Railroad Company; The Wheeling & Lake Erie Railway Company; Terre Haute, Indianapolis & Eastern Traction Company; Portland Railway, Light & Power Company; Ohio Valley Electric Railway Company; Alabama Great Southern Railroad Company; Asheville & Craggy Mountain Railway Company; Asheville Southern Railway Company; Atlantic & Yadkin Railway Company; Atlanta Terminal Company; Belt Railway Company of Chattanooga; Birmingham Terminal Company; Blue Ridge Railway Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Chattanooga Station Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Columbia Union Station Company; Columbus & Greenville Railroad Company; The Cumberland Railroad Company and J. F. Campbell, Receiver; Danville & Western Railway Company; Delta Southern Railway Company; Durham Union Station Company; Elberton Southern Railway Company; Ensley Southern Railway Company; Georgia Midland Railway Company; Georgia Southern & Florida Railway Company; Gulf Terminal Company; Harriman & Northeastern Railroad Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company and R. B. Pegram, Receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Kentucky & Indiana Terminal Railroad Company; Macon & Birmingham Railway Company; Meridian Terminal Company; Mobile & Birmingham Railroad Company; Mobile & Ohio Railroad Company; Mobile Docks Company; New Orleans & Northeastern Railroad

Company; The New Orleans Terminal Company; North Carolina Midland Railroad Company; North Charleston Terminal Company; North & South Carolina Railroad Company; Northern Alabama Railway Company; Richmond & Mecklenburg Railroad Company; St. Johns River Terminal Company; Sievern & Knoxville Railroad Company; Southern Railway Company; Southern Railway (Carolina Division); Southern Railway Company of Indiana; Southern Railway Company, in Kentucky; State University Railroad Company; Tallulah Falls Railway Company; Tennessee & Carolina Southern Railway Company; Woodstock & Blocton Railway Company; Yadkin Railroad Company; Alabama & Vicksburg Railway Company; Norfolk & Western Railway Company; Tennessee Central Railroad Company and W. K. McAlister, Receiver; Tennessee Central Railroad Company and H. W. Stanley, Receiver; Tug River & Kentucky Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Williamson & Pond Creek Railroad Company; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Augusta Belt Railway Company; Augusta Union Station Company; Augusta & Summerville Railroad Company; Belt Line Railway of Alabama; Carolina Railroad Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Central of Georgia Railway Company; Central Railroad Company of South Carolina; Charleston Terminal Company; Charleston Union Station Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chesterfield & Lancaster Railroad Company; Columbia, Newberry & Laurens Railroad Company; East Carolina Railway; East & West Coast Railway; Elberton & Eastern Railroad Company; Florida Central & Gulf Railway; Florida East Coast Railway Company; Florida East Coast Car Ferry Company; Georgia Railroad; Georgia, Florida & Alabama Railway Company; Goldsboro Union Station Company; Jacksonville Terminal Company; The Kinston Carolina Railroad Company; Lexington Terminal Railroad Company; Louisville & Wadley Railroad Company; Macon, Dublin & Savannah Railroad Company; Marion & Southern Railroad Company; Milledgeville Railway Company; The Monroe Railroad Company; Norfolk Southern Railroad Company; Northwestern Railroad Company of South Carolina; Raleigh & Charleston Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Savannah River Terminal Company; Savannah Union Station Company; Seaboard Air Line Railway Company; South Carolina Pacific Railroad Company; Sylvania Central Railroad Company; Tampa & Gulf Coast Railroad Company; Union Point & White Plains Railroad Company; The Virginian Railway Company; Wadley Southern Railway Company; Washington & Lincolnton Railroad Company; Washington & Vandemere Railroad Company; Western Railway of Alabama; Wilmington Railway Bridge Company; Winston Salem Southbound Railway Company; Wrightsville & Tennille Railroad Company; Detroit & Toledo Shore Line Railroad Company; Toledo, St. Louis & Western Railroad Company and W. L. Ross, Receiver; The Ulster & Delaware Railroad Company; Transylvania Railroad Company; Washington & Old Dominion Railway; Panama Railroad Company; Dover & Southbound Railroad Company; Preston Railroad Company; Salt Lake, Garfield & Western Railway Company; The Pullman Company; Pullman Railroad Company; Cumberland & Pennsylvania Railroad Company;

Aberdeen & Ashboro Railway Company; Acme Tap Railway Company; Adena Railroad Company; Addison Railroad Company; Addyston & Ohio River

Railroad Company; Agatite Short Line Railway; A. H. Bull Steamship Company; Alabama & Tombigbee Railroad; Alabama City, Gadsden & Attala Railway Company; Alabama Consolidated Coal & Iron Company's Railroad; Alabama Navigation Company; Alabama Northwestern Railway Company; Alabama Southern Railroad Company; Alabama Eastern Railroad Company; Albany & Susquehanna Railroad Company; Albany & Vermont Railroad Company; Albany Day Line; Albany Street Railroad Company; Albertson Great Eastern Railroad Company; Albuquerque Eastern Railway Company; Alexander & Eastern Railway Company; Algiers Railway & Lighting Company; Allegheny & Western Connecting Railway Company; Allegheny & Western Railway Company; Allegheny Railroad Company; Allegheny Terminal Company; Allentown Railroad Company; Allentown Terminal Railroad Company; Alton Terminal Railway Company; Altoona, Juniata & Northern Railway Company; Altoona & Beech Creek Railroad Company; Amador Railway Company; Ames & College Railway Company (Electrical); Anderson & Bella Vista Railroad; Anderson & Salina River Railroad Company; Annapolis & Chesapeake Railroad Company; The Anning J. Smith Transportation Line and J. C. J. Van Noyes, Receiver; Apalachia & Cleveland Railway; Arbacoochee Timber & Railway Company; Argentine & Grays Peak Railway; Argentine Central Railway; Arkansas & Gulf Railroad Company; Arkansas & Eastern Railroad Company; Arkansas, Oklahoma & Western Railroad; Arkansas, Red River & Paris Railway Company; Arkansas Valley Railroad Company; Aroostook River Railroad; Andalusia, Florida & Gulf Railway; Androscoggin & Kennebec Railway Company; Atlantic City & Shore Railway Company and A. J. Puritan, Receiver; Asheville Northern Railroad Company; Athens, Amesville & Chauncey Railway Company; Athens Belt Line Railroad Company; Atchison Union & Depot Railroad Company; Atlanta Belt Line Company; Atlanta & Charlotte Air Line Railway Company; Atlantic & Carolina Railroad; Atlantic & St. Lawrence Railroad Company; Atlantic Coast Lumber Corporation's Railroad; Atlantic Northern & Southern Railway Company; Atlantic Southern Railroad Company; Atlantic, Quebec & Western Railway Company; Atlantic Shore Railway and F. O. Conant & Constant Southworth, Receivers; Attleboro Branch Railroad Company; Austin Dam & Suburban Railroad Company; Augusta & Northwestern Railway Company; Augusta & Savannah Railroad Company; Augusta & Savannah Steamboat Company and W. A. Smith, Receiver; Augusta Savannah Navigation Company; Aurora, DeKalb & Rockford Electric Traction Company; Aurora, Elgin & Chicago Railroad Company and J. K. Choote, Receiver; Avon, Genessee & Mount Morris Railroad Company; Ayer & Lord Barge Company; Bachman Valley Railroad Company; Bakersfield & Ventura Railroad Company; Baldwin County Transportation Company; Ballard & Thompson Railroad; Bare Rock Railroad Company; Barnegat Railroad Company; Barre & Chelsea Railroad; Barre Branch Railroad Company; Barre Railroad Company; Bastrop & Lake Providence Railway; Battle Creek & Sturgis Railway Company; Bay City & Battle Creek Railway Company; Bay de Noquet Railroad Company; Bayfield Harbor & Great Western Railroad Company; Bayfield Superior & Minneapolis Railway Company; Bayonne & New Haven Transportation Company; Bay Shore Connecting Railroad Company; Bay Shore Railway; Bayside Logging Railroad; Bay State Railroad; Beach & Mill Line; Beaverton & Willsburg Railroad Company; Bearden & Ouachita River Railroad Company; Beaufort County Lumber Company's Railroad; Beaver Connecting Railroad Company; Beaver Creek Railroad Company; Beaver Meadow,

Tresckow & New Boston Railroad; Beaver & Ellwood Railroad Company; Bedford & Hollidaysburg Railroad Company; Bedford & Bridgeport Railway Company; Beach Creek Extension Railroad Company; Bedford & Wallner Railroad Company; Bee Tree Railroad Company; Beirne & Clear Lake Railroad Company; Belcher Mountain Railway Company; Bellevue Valley Railroad Company; Belt Railroad & Stock Yard Company; Belt Railroad of San Francisco; Belvidere Delaware Railroad Company; Bennett & Eastern Railroad; Benton Harbor Terminal Railway Company; Bering, Kiam & Southern Railroad Company; Berkeley Springs & Potomac Railroad Company; Berkshire Railroad Company; Berlin Railroad Company; Bernice & Northwestern Railway Company; Bessemer & Southwestern Railroad; Bethel Granite Railway Company; Birmingham & Atlantic Railroad Company and G. R. Williams, Receiver; Big Creek & Trinity Valley Railway Company; Big Creek Lumber Company's Railroad; Big Falls Railway Company; Big Stone Gap & Powells Valley Railroad Company; Billings & Central Montana Railway; Birmingham & Gulf Railway & Navigation Company; Bluestone Traction Company; Black & White River Transportation Company; Black Lick & Yellow Creek Railroad Company; Black Mountain Railway; Bladen & Columbus Railroad Company; Blakeley Southern Railroad Company and J. B. Bevings, Receiver; Blaney & Southern Railroad Company; Bloomington Southern Railroad Company; Bluefields Fruit & Steamship Company; Blue Funnel Line; Blue Hill Line; Blue Ridge & Atlantic Railway Company; Bluffton, Geneva & Salina Traction Company; Bogue Chitto, Liberty & Southwestern Railroad; Boise City Railway & Terminal Company; Bamberg, Ehrhardt & Walterboro Railway Company; Bonita & Fort Myers Connecting Line; Book Cliff Railroad Company; Border Line Transportation Company; Boston & Gloucester Steamship Company; Boston & Little River Railway Company; Boston & Lowell Railroad Corporation; Boston & Norfolk Line; Boston & Portland Line; Boston & Providence Railroad Corporation; Boston & Yarmouth Steamship Company; Boston, Norfolk, Newport News & Baltimore Line; Boston, Revere Beach & Lynn Railroad Company; Boston Terminal Company; Bowden Railway; Bowie, Lafourche & Northwestern Railway Company; Bowling Green Railroad Company; Bradford Railway Company; Branchville & Bowman Railroad Company; Brandon & West Rutland Railroad Company; Brandon, Devils Lake & Southern Railway Company; Branden, Saskatchewan & Hudson Bay Railway Company; Brice & Smart Railroad; Bridgeport & Windmire Railway Company; Bridgeport Line; Bristol Railroad Company and R. Denio, Receiver; British Columbia Electric Railway, Limited; British Yukon Navigation Company; British Yukon Railway; Brockton & Plymouth Street Railway Company; Brook Railroad Company; Brookfield Railroad Company; Brookings Lumber & Box Company's Railroad; Brooklyn Eastern District Terminal; Brooksville Railroad; Brunswick & Chillicothe Railroad Company; Brunswick & Florida Steamship Company; Brunswick Steamboat Lines; Blue Island Railway Company; Brunswick & Florida Steamboat Company; Buchanan Lumber Company's Railroad; Buchanan & St. Joseph River Railroad; Bucksport & Elk River Railroad Company; Berkshire Street Railway Company; Buffalo & Susquehanna Coal & Coke Company's Railroad; Buffalo, Bradford & Pittsburgh Railroad Company; Buffalo Creek Transfer Railroad Company; Buffalo Erie Basin Railroad Company; Buffalo, Thousand Island & Portland Railroad Company; Burlington & Southeastern Railroad Company; Burton Lumber Company's Railroad; Burton Steamship Company; Bush Line;

Butte County Railroad Company; Butters Lumber Company's Railroad; Canadian National Railways; California Northeastern Railway Company; Canada Interlake Line, Limited; Canadian Lake Line; Cadiz Railroad in Kentucky; Cairo, Memphis & Southern Railroad & Transportation Company; Cairo Railroad; Caldwell & Northern Railroad Company; Caldwell Interurban Railway Company; Caldwell Norton Lumber Company's Railroad; California Navigation & Improvement Company; California Northwestern Railway; California Southern Railroad Company; Caloosahatchie River Steamboat Line; Calumet Fuel Company's Railroad; Calumet & Southeastern Railway Company; Cambria & Clearfield Railway Company; Camden & Burlington County Railroad Company; Camino, Placersville & Lake Placid Railway; Campbell Hall Connecting Railway Company; Campbell Lumber Company's Railroad; Canada & Gulf Terminal Railroad; Canada, Atlantic & Plant Steamship Company; Canada Southern Bridge Company; Canadian Australian Royal Mail Steamship Line; Canadian Pacific Ocean Service, Limited; Cannelton Railroad Company; Canton & Wooster Railroad Company; Canon City & Cripple Creek Railroad Company; Cape Breton Railway; Caraquet Railway; Carribean & Southern Steamship Company; Carman & Jefferson Railroad; Carolina Valley Railway Company; Carter-Kelley Lumber Company's Logging Railroad; Carthage & Adirondack Railway Company; Carthage & Copenhagen Railroad Company; Carthage Watertown & Sacket's Harbor Railroad Company; Casco Bay & Harpswell Lines; Cashie & Chowan Railroad & Lumber Company; Casper, South Fork & Eastern Railroad; Castle Valley Railroad Company; Catahoula Central Railway Company; Catawissa Railroad Company; Catonsville Shore Line Railroad Company; Catskill Mountain Railroad Corporation; Casenovia Southern Railroad Company; Catskill Evening Line; Cayuga & Susquehanna Railroad Company; Central Electric Traffic Association; Central California Railway Company; Central Arkansas & Eastern Railroad Company; Central American Railroads; Central Arizona Railway Company; Central Dock & Terminal Railway Company; Central Ontario Railway Company; Central Pennsylvania Lumber Company's Railroad; Central Railroad Company of Louisiana; Central Railroad Company of Oregon; Central Railroad Company of Pennsylvania; Central Transfer Railway & Storage Company; Central Trunk Railroad Company; Chicago, Aurora & DeKalb Railroad Company and H. Gunsel, Receiver; Chico & Northern Railroad Company; Chagrin Falls & Lake Erie Railroad Company; Champion Lumber Company's Railroad; Changninola Railway; Charlottesville & Rapidam Railroad Company; Chateaugay & Lake Placid Railway Company; Chatham Railroad Company; Chattahoochee & Gulf Railroad Company; Chattanooga Packet Company (Tennessee); Chattanooga Railway & Light Company; Chattanooga Terminal Railway Company; Chautauqua Lake Navigation Company; Chautauqua Steamboat Company; Chautauqua Traction Company; Chehalis County Logging & Timber Company's Railroad; Chelan Transportation & Smelting Company's Railroad; Cherry River Boom & Lumber Company's Railroad; Cherry Run & Potomac Valley Railroad Company; Cherry Valley, Sharon & Albany Railroad Company; Chesapeake & Curtiss Bay Railroad; Chesapeake & Ohio Railway Company of Kentucky; Chippewa Valley & Northern Railway Company; Canton, Aberdeen & Nashville Railroad Company of Alabama; Carthage & Pinehurst Railroad Company; Chester Creek Railroad Company; Chester Railroad Company; Chestnut Hill Railroad Company; Chicago, Bloomington & Decatur Railway Company; Chicago, Ziegler & Gulf Railroad Company;

Chicago & Duluth Transportation Company and Dennis Sullivan, Receiver; Chicago & Illinois Southern Railroad Company; Chicago & Kalamazoo Terminal Railroad Company; Chicago & Lake Superior Railway Company; Chicago & South Bend Railroad Company; Chicago, Anamosa & Northern Railway Company and G. N. Farmer, Receiver; Chicago, Duluth & Georgian Bay Transit Company; Chicago Heights Terminal Transfer Railroad Company; Chicago, Indianapolis & St. Louis Short Line Railway Company; Chicago Lighterage Company; Chicago Warehouse & Terminal Company; Chicago & Wabash Railway Company; Chihuahua Mineral Railway; Chippewa River & Northern Railway Company; Choctaw Lumber & Veneer Company's Railroad; Choctaw New Castle & Western Railroad Company; Chowahilla Pacific Railway; Cincinnati & Birmingham Air Line Railway; Cincinnati & Dayton Railway Company; Cincinnati & Southern Ohio River Railroad Company; Cincinnati & Westwood Railroad Company; Cincinnati, Bluffton & Chicago Railroad Company; Cincinnati, Findlay & Fort Wayne Railway Company; Cincinnati, Lawrenceburg & Aurora Electric Street Railroad Company and C. E. Hoover, Receiver; Cincinnati, Saginaw & Mackinaw Railroad Company; Cincinnati Southern Railway; Cinelare Central Factory Railroad; City & Suburban Railway of Washington; Clark & Pike County Railroad Company; Clark & Rocheport Railway; Clarksburg Northern Railroad; Clear Creek Lumber Company's Railroad; Clearfield & Mahoning Railway Company; Clear Lake Lumber Company's Railroad; Clearwater Valley Railroad Company; Clement Lumber Company's Railroad; Cleveland & Toledo Line; Cleveland & Mahoning Valley Railway Company; Clyde St. Johns River Line; Coal Creek Lumber Company's Railroad Company; Coast Line Railway Company; Collins & Ludowici Railroad and J. V. Kelly and M. S. Lewis, Receivers; Coal River Railway; Cobb & Mitchell Logging Railway; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & Spokane Railway Company; Colebrookdale Railroad Company; Colfax Consolidated Coal Company's Railroad; Colorado Eastern Railroad Company; Colorado, Kansas & Oklahoma Railroad Company; Colorado Railroad Company; Columbia & Port Deposit Railway Company; Columbia & Red Mountain Railway; Columbia & Southern Railway Company and H. A. Middleton, Receiver; Columbia & Xenia Railroad Company; Columbus, Findlay & Northern Railroad Company; Columbus, Hope & Greensburg Railroad Company; Columbus, Marion & Bucyrus Railroad Company and G. Whysale and F. E. Guther, Receivers; Columbus Railroad Company; Colusa & Lake Railroad Company; Colorado Midland Railroad Company; Concord & Claremont New Hampshire Railroad Company; Concord & Montreal Railroad; Concord & Portsmouth Railroad; Conemaugh & Black Lick Railway Company; Congress Consolidated Mines Company, Ltd.; Connecticut & Passumpsic Rivers Railroad Company; Connecticut River Railroad Company; Connecting Railway Company; Conway Electric Street Railway Company; Cooperstown & Susquehanna Valley Railroad Company; Copper Belt Railroad Company; Cornie Valley Railroad; Coronada Railroad Company of California; Coronada Railroad of Arizona; Coshocton Railroad Company; Cotton Belt Lumber Company; Cotton State Lumber Company's Railroad; Council City & Solomon River Railroad Company; Craig & Jackson Line; Cranberry Lake Railroad Company; Cranberry Transportation Company; Crescent City & Smith River Railroad; Creston Winterset & Des Moines Railroad and C. E. Wilson, Receiver; Crosett Railway Company; Crosett, Monticello & Northern Railway Company; Crowell & Spencer Lumber Company's Railroad; Crow's Nest Southern Railway Com

pany; Culbreth Logging Company's Railroad; Cumberland Railway Company; Cumberland Valley & Martinsburg Railroad Company; Cummer Lumber Company's Railroad; Curtiss Lumber Company's Railroad; Curtiss, Attalia Lumber Company's Railroad; Currituck Line; Cybur, Gulf & Northwestern Railway Company; Crystal River & San Juan Railroad Company; Dahoga & Highland Railroad Company; Dallas, Portland & Astoria Navigation Company; Dallas Terminal Railway & Union Depot Company; Dantzeler Lumber Company's Railroad; Danville & Eastern Railway Company; Danville & Edwardsville Terminal Railway Company; Danville & Northern Railway Company; Danville & Southeastern Railway Company; Daniels Roanoke River Line; Danville & Indiana Harbor Railroad Company; Davis Brothers Logging Railroad, L. A.; Davis Lumber Company's Railroad, J. R.; Dayton & Michigan Railroad Company; Dayton & Western Railroad Company; Dayton Coal & Iron Company's Railroad; Dayton, Springfield & Xenia Southern Railway Company; Dearborn Tram & Transfer Company; Decatur Belt Railway Company; Deerfield River Railroad Company; De Funiak Springs & Northern Railroad Company; Denver, Boulder & Western Railroad Company; Delhi, Baskin & Southwestern Railway Company; Delaware & Bound Brook Railroad Company; Delaware River Railroad & Bridge Company; Delaware Railroad Company; Delaware Valley Railway Company; De Kalb & Western Railroad Company; Del Oro Transportation Company; W. Denny & Company's Logging Railroad; Denver & Gulf Railroad Company; De Ron Lumber Company's Railroad; Deserento Navigation Company; Des Moines & Fort Dodge Railroad Company; Des Moines, Iowa Falls & Northern Railway Company; Des Moines Western Railway Company; De Soto Land & Lumber Company's Railroad; Detroit & Bay City Railroad Company; Detroit & Charlevoix Railroad Company; Detroit, Delray & Dearborn Railroad Company; Detroit, Hillsdale & Southwestern Railroad Company; Detroit Manufacturers Railroad; Detroit Terminal Railway & Transportation Company; Detroit, Toledo & Milwaukee Railroad Company; Detroit, Toledo Railroad Company; Detroit Union Railroad, Depot & Station Company; Devils Lake & Chautauqua Transfer Company; Diamond & Calder Railroad Company; Dixie Route; Dolgeville & Salisbury Railway Company; Dominion Transportation Company; Donaldson Railroad; Dorcheat Valley Railroad Company; Dougha Land Company's Railroad; Douglas Land Company's Railroad; Douglas Transportation Line; Dowling Lumber Company's Railroad; Drummond & Southwestern Railway Company; Dublin & Southwestern Railroad Company; Duluth & Northern Railroad Company; Duluth Belt Line Railroad Company; Duluth, Fergus Falls & Southern Railway Company; Duluth, St. Cloud, Clences & Mankato Railway Company; Duluth Street Railway Company; Dunbar & Wausaukee Railway; Dunnellon Phosphate Company Railroad; Durham & Charlotte Railroad; Durham Railroad Company; Durham Transportation Company; Dyer Transportation Line; Eagle Lumber Company's Railroad; Eagle Sale Works Railroad Company; Eagles Mere Railroad Company and E. Bailey, Receiver; East Berline Railway; East Chicago Belt Railroad Company; East Coast Navigation Compan. ; East Georgia Railway Company; East Mahoney Railroad Company; East Pennsylvania Railroad Company; East River Terminal Railroad; East Short Line; East Trenton Railroad Company; Eastern Massachusetts Street Railway Company; Eastern Railroad Company; Eastern Wisconsin Electric Company; Eastern & Western Lumber Company's Railroad;
astern Texas Railroad Company; Edgewater Terminal Railroad Company; Edgewater Connecting Railway Company; Edwardsville Belt Railroad Com-

pany; Elberton Air Line Railroad Company; El Dorado Lumber Company's Railroad; El Dorado, Marion & Southwestern Railway Company; Elk & Highland Railroad Company; Elkhart & Western Railroad Company; Elkton & Guthrie Railway Company; Elkton & Middleton Railroad Company of Cecil County; Elk Valley Coal & Iron Company's Railroad; Ellaville, Westlake & Jennings Railway; Ellenville & Kingston Railroad Company; Ellisville Lumber Company's Railroad; Ellwood Connecting Railroad Company; Elmira & Lake Ontario Railroad Company; Elmira & Williamsport Railroad Company; Elmira & Seneca Lake Traction Company; Elmira Water, Light & Railroad Company; Elmore & Southwestern Railroad; El Paso & Juarez Traction Company; El Paso Electric Railway Company; El Paso, Kansas City Short Line; Empire & Southeastern Railroad Company; Empire Lumber Company's Railroad; Emporium & Rich Valley Railway Company; England & Clear Lake Railway Company; Englewood, Alexandria & Southwestern Railroad Company; Eppa & Northwestern Railroad Company; Erie & Central Pennsylvania Railroad Company; Erie & Kalamazoo Railroad Company; Erie Railroad Transit Line; Erie Railroad Transit Canal Line; Erie Traction Company; Eastern Railroad Company; Eastern Wisconsin Electric Company; Estre Navigation Company; Escambia Land & Manufacturing Company's Logging Railroad; Estacado & Gulf Railroad Company; Euclid Railroad Company; Eureka & Freshwater Railway Company; Eureka & Palisade Railway Company; Eureka Nevada Railroad; Eureka Lumber Company's Railroad; European & North American Railway Company; Evansville & Bowling Green Packet Company; Evansville, Indianapolis & Terre Haute Railway Company; Evansville Terminal Railway; Fairland, Franklin & Martinsville Railroad Company; Fairmont & Mannington Railroad Company; Fairmont, Shinneton & Clarksburg Railway Company; Farnsworth Lumber Company's Railroad; Fayetteville & Little Rock Railway Company; Fayette County Railroad Company; Fentress County Railroad Company; Finkbine Lumber Company's Railroad; Florida & Georgia Railway Company; Florida Coast Island Navigation Company; Florida Railway Company; Flovilla & Indiana Springs Railway Company; Flowers Brothers Lumber Company's Railroad; Flynn Lumber Company's Railroad; Fort Collins Development Railway Company; Fort Scott Central Railway Company; Fort Smith & Western Railroad Company and A. L. Mills, Receiver; Fort Smith Union Depot Company; Fort Wayne & Decatur Traction Company; Fort Wayne & Jackson Railroad Company; Fort Wayne & Detroit Railroad Company; Fort Worth & Denver Terminal Railway Company; Fostoria & Fremont Railway Company; Fostoria & Northern Transportation Company; Foster Latimer Lumber Company's Railroad; Fox Creek Railroad; Frank Waterhouse & Company; Franklin & Tilton Railroad Company; Freehold & Jamesburg Agricultural Railroad Company; Freeo & Delta Railroad Company; French Broad Railroad Company; Frenchton & Arlington Railroad; Fulton Navigation Company; Furon Boat Line; Galesburg & Western Railroad Company and T. M. Cox, Receiver; Galveston & Western Railway Company; Galveston, Beaumont Northeastern Railway Company; Galveston Terminal Railroad Company; Galveston Wharf Company; Garnerville Railroad Company; Gary & Interurban Railway Company; Gary Connecting Railway Company; Gary & Western Railway Company; Gennessee Valley Canal Railroad Company; Gennessee Valley Terminal Railroad Company; Geneva Lumber Company's Railroad; Georges Valley Railroad Company; Georgia Granite Railroad Company and F. T. Mason, Receiver; Georgia Marble Company's Railroad;

Georgia Railroad & Banking Company; Georgetown & Tennallytown Railway Company; Gilpin Railroad Company; Glasgow Railway Company; Glendale Railroad Company; Glenfield & Western Railroad Company; Glenn Springs Railroad Company; Glenwood Railroad Company; Gloversville & Bradalbin Railroad Company; Goble, Nehalem & Pacific Railway Company; Golconda & Adelaide Railroad; Golden Circle Railroad Company; Goldfield Consolidated Milling & Transportation Company; Goose Lake & Southern Railway Company; Goshen & Deckertown Railway Company; Goshen, South Bend & Chicago Railway Company; Gouverniur & Oswegatchia Railroad Company; Grafton & Belington Railroad Company; Grand Rapids & Northwestern Railroad; Grand Rapids, Kalkaska & Southeastern Railroad Company; Grand River Valley Railway Company; Grande Ronde Lumber Company's Railroad; Grand Trunk Junction Railway Company; Grand Trunk Pacific Railway Company; Granite City & East St. Louis Terminal Railroad Company; Granite City & Mississippi River Railroad; Granite Railway Company; Grass Creek Terminal Railway Company; Gray Lumber Company's Tram Road; Green Bay Transportation Company; Grays Point Terminal Railway Company; he Greene Railroad Company; Greenfield & Southeastern Railway; Greenville Southern Railway Company; Greenville, Spartanburg & Anderson Railway Company; Greenville & Vanceboro Railroad Company; Greenville Northwestern Railway Company and N. W. Moursund, Receiver; Greenville & Western Railway Company; Greenwood Railroad Company; Greigsville & Pearl Creek Railroad Company; Griffin Magnolia & Western Railway Company; Groves Creek Railroad; Gualala River Railroad; Gulf & Chicago Railway Company; Gulf, Beaumont & Great Northern Railway Company; Gulf, Brownwood & Cisco Railway Company; Gulf Line Railway Company; Gulf Coast Transportation Company; Gulf Cypress Lumber Company; Gulf, Hutchinson & Northwestern Railroad; Gulf, Sabine & Red River Railroad; Gunflint & Lake Superior Railroad Company; Hammond & Eastern Railroad; Hammond Lumber Company's Railroad; Hancock & Calumet Railroad Company; Hanging Rock Iron Company; Hannibal Union Depot Company; Hanover Railway Company; Hardy Creek & Eel River Railroad Company; Harkin Transportation Company; Harlem River & Port Chester Railroad Company; Harrisburg, Portsmouth, Mt. Joy & Lancaster Railroad Company; Harrison Branch Railroad Company; Hartford & Connecticut Western Railroad Company; Hartford & New York Transportation Company; Hartford Eastern Railway Company; Haynesville & Montgomery Railroad Company; Hayts Gernerz, Ovid & Willard Railroad Company; J. H. Heald & Company's Railroad; Heck Belt Line Railroad Company; Hetch Hetchy & Yosemite Valley Railway Company; Hibernian Mine Railroad Company; Hibernia Underground Railroad Company; Hicks Run Railroad Company; Higginsville Switch Company's Railroad; High Bridge Railroad Company; Hixon, Sumter & Northwestern Railway; Hoboken Railroad, Warehouse & Steamship Connecting Company; Helston Valley Railway Company; Holyoke & Westfield Railroad Company; Hemar & Southeastern Railroad; Home Avenue Railroad Company; Hepatsong Railroad Company; Hornell & Dansville Railroad Company; Horn Pond Branch Railroad Company; Houlton Lumber Company's Railroad; Hudson Portland Cement Company's Railroad; Hudson River Bridge Company; Humbolt Logging Railway Company; Huntington & Big Sandy Railroad Company; Hyner Run Railroad; Idaho & Northwestern Railway Company; Idaho Southern Railroad Company and S. C. McWatters, Receiver; Illinois Traction System; Illinois Western Railway Company;

Illwaco Railroad Company; Indiana Stone Railroad Company; Indianapolis, Crawfordsville & Danville Electric Railway Company; Indianapolis, Newcastle & Eastern Traction Company; Indian Creek & Pond River Railroad Company; Industrial Lumber Company's Tram Road; Independence & Monmouth Railway; Indiana Service Corporation; Indianapolis & Louisville Railway Company; Inland Lines Limited; Inland Railway Company; Inman Packet Company; Interior & West Virginia Railroad Company; International Mercantile Marine Company; International Navigation & Trading Company; International Railway of Maine; International Transportation Company; Inter Ocean Steamboat Company; Interstate Consolidated Street Railway Company; Inverness Railway & Coal Company; Ione & Eastern Railroad Company; Iowa & Southwestern Railroad Company; Iowa Central & Western Railway; Iowa Midland Railway; Iowa Railway & Light Company; Iowa Traction Company; Iowa Transfer Railway Company; Iron Belt Railroad; Iron Mountain & Green Briar Railroad Company; Iron Mountain Railway Company; Island Creek Railroad Company; Island Railroad Company; Ivorydale & Millcreek Valley Railway Company; Jackson, Lansing & Saginaw Railroad Company; Jackson & Southeastern Railroad Company; Jacksonville & Mayport Steamboat Company; Jacksonville & Midland Railway Company; Jamestown & New Port Ferry Company; Jamaica & South Shore Railroad Company; Jamestown, Franklin & Clearfield Railroad Company; Jasper & Eastern Railway Company; Jennings & Northeastern Railroad Company; Jennings Brothers Railroad; Johnson, Lagoon & Northern Railway Company; Johnsonburg Railroad Company; Johnstown, Gloversville & Kingsboro Horse Railroad Company; Joliet & Northern Indiana Railroad Company; Kansas City & Southwestern Railway Company of Kansas; Kalamazoo, Allegheny & Grand Rapids Railroad Company; Kalamazoo & South Haven Railroad Company; Kanawha Traction & Electric Company; Kankakee & Seneca Railroad Company; Kansas City, Burlingame & Western Company; Kansas City, Mexico & Orient Railroad Company and W. T. Kemper, Receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City, Rock Island Railway Company; Kansas City, St. Louis & Chicago Railroad Company; Kansas City, Tulsa & Southwestern Railroad Company; Kansas Southern & Gulf Railroad Company and G. E. Morris, Receiver; Kaslo & Slocan Railroad Company; Keaseville, Ausable Chasm & Lake Champlain Railroad Company; Keller Chemical Company's Railroad; Kendall & Sulphur Springs Railway Company; Kennebunk & Kennebunkport Railroad Company; Kenneys Creek Railroad Company; Kentucky Lumber & Veneer Company's Railroad; Kentucky Valley Railroad Company; Keokuk & Hamilton Bridge Company; Keokuk Union Depot Company; Kettle Valley Railway Company; Kingston & Snow Hill Railroad Company; Kinkera & New Lisbon Railroad Company; Kinzie Brothers Steamboat Company; Kinzua Railway Company; Kinzua Hemlock Railroad Company; Kinzua Valley Railroad Company; Kirby Lumber Company's Tram Road; Kittanning Run Railroad Company; Klamath Lake Railroad Company; Knox Railroad Company; Koolah Railway Company, Ltd.; Kootenai Valley Railway Company; Koreshan Unity Railway Company; La Fayette Union Railway Company; La Follette Coal, Iron & Railway Company; Laganda & Western Railway Company; Lake Champlain Steamboat Line; Lake Erie, Bowling Green & Napoleon Railway Company and C. G. Taylor, Receiver; Lake Griffin Transportation Company; Lake Hancock & Claremont Railway Company; Lake Houtseng Railroad Company; Lake Michigan Car Ferry Transportation Company; Lake Ontario &

Bay of Quinte Steamboat Company, Ltd.; Lake Transfer Company; Lake Whatcom Logging Company's Railroad; Lancaster & Quarryville Railroad Company; Lancaster, Oxford & Southern Railway Company; Lansing Manufacturing Railroad Company; Lansing Transit Railway Company; Laona & Northern Railway; Lathrop-Hattes Railway Company; Latrobe-Connellsville Coal & Coke Company's Railroad; Lauderdale & Northwestern Railroad Company; Laurel & Tallahoma Western Railway; Laurel Railway Company of Virginia; Laurelton & Pine Creek Railroad; Learned Logging Company's Railroad; Leavenworth, Kansas & Western Railway Company; Lebanon Thornton Traction Company; Leech Lake & Northern Railway Company; Leesville East & West Railroad Company; Lehigh & New York Railroad Company; Lehigh & Oxford Railroad Company; Lehigh & Pavilion Railroad Company; Lehigh Coal & Navigation Company; Lehigh Valley Railway Company; Leland Southwestern Railroad Company; Lewisburg & Roneavorta Electric Railway Company; Lewisburg & Tyrone Railroad Company; Lewiston & Auburn Railroad Company; Lewiston & Southeastern Railroad Company; Lexington Union Station Company; Liberty White Railroad Company; Licking River Railroad Company; Lima Belt Railway Company; Lima Honceye Light & Railroad Company; Lima Southern Railway Company; Lincoln Northern Railway Company; Litchfield & Madison Railway Company; Lithonia & Arabia Mountain Railway; Little Falls & Dolgeville Railroad Company; Little River Railway Company of Arkansas; Little Rock, Sheridan & Saline River Railway Company; Little Schuylkill Navigation Railroad & Coal Company; Livingston & Southeastern Railway Company; Livonia & Lake Conesus Railroad Company; Lockhart Railroad Company; London & Port Stanley Railway; Long Branch Coal & Railroad Company; Long Island Company, North Shore Branch; Longwood Valley Railroad Company; Lorain & Ashland Railroad Company; Lorain & Southern Railroad Company; Lorama Railroad Company; Lordsburg & Pyramid Railroad; Los Angeles & San Diego Beach Railway Company; Lotbinier & Magantic Railway Company; Louisiana & Eastern Railway; Louisiana & Mississippi Railroad Transfer Company; Louisiana Central Railroad Company; Louisiana Central Railway Company; Louisiana Nickel Plate Railway Company; Louisville Bridge Company; C. H. Loveland's Railroad; Lowell & Andover Railroad Company; Ludington Transportation Company;

Lucaston Railroad Company; Ludington & Northern Railroad Company; Ludlow & Southern Railway Company; Lushrmann & Western Railway Company; Laurinburg & Southern Railroad Company; McKean & Buffalo Railroad Company; McKeesport & Clairton Connecting Railway Company; C. V. McMilliam Company's Logging Railroad; McRae Terminal Railway Company; McCrory & Reedsville Southern Railway Company, and H. W. Hermingham, Receiver; Macomb & Western Illinois Railway Company; Mahoning Coal Railroad Company; Mahoning State Line Railroad Company; Mahoning Valley Railway; Mahopac Falls Railroad Company; Maine Steamship Company; Mammoth Cave Railroad Company; Manahawkin & Long Beach Transportation Company; Manchester & Lawrence Railroad Company; Manchester, Dorsett & Gransville Railroad Company; Mangham & Northeastern Railway Company; Manhattan Navigation Company; Manistee & Luther Railroad Company; Manitoba Great Northern Railroad Company; Manitou Steamship Company; Manns Creek Railroad; Mapleton & Rock Ridge Railway Company; Marathon County Railway Company; Marbury & Kingston Railroad; Marengo, Choctaw & Meridian

Line Railway Company; Marginal Railroad; Maricopa & Phoenix Railroad Company; Marion Railway Corporation; Marietta, Columbus & Cleveland Railroad Company, and D. P. Terpy, Receiver; Marine Railway Company; Marine Merchants Terminal Company; Marion & Bluffton Traction Company; Marlborough Railroad Company; Maryland & Pennsylvania Terminal Railway Company; Mary Lee Railroad; Marshall & East Texas Railway Company; Marquette & Bessemer Dock Railroad & Navigation Company; Mason Lumber Company's Railroad; Maumee Valley Railways & Light Company; Mayville & Lexington Railroad Company; Meacham Lumber Company's Railroad; Meadows Land & Zediker Railroad Company; Meadville & Summerville Railroad Company; Memphis & Charleston Railway Company; Memphis & Lake View Railway Company; Memphis & State Line Railroad Company; Memphis Union Station Company (Terminal Company); Merchants Mutual Line; Mesaba Railway Company; Meto Valley Railway Company and J. A. Watkins, Receiver; Metropolitan Rapid Transit Light & Power Company; Mexican American Steamship Company; Mexican Railway Company; Mexican Northwestern Railway Company; Michigan City, Chicago & Western Transportation Company; Michigan, Indiana & Illinois Line; Midland Railway Company; Middlebrook, Graniteville & Belleview Railroad Company; Middleburgh & Schoharie Railroad Company; Middletown, Unionville & Water Gap Railroad Company; Midway & Sakdale Railway Company; Milford & Woonsocket Railroad Company; Milford, Attleboro & Woonsocket Street Railway Company; Milford, Franklin & Providence Railroad Company; Mill Creek & Little River Railway & Navigation Company; Mill Creek & Mine Hill Railroad Company; Millstone & New Brunswick Railroad Company; Mills Steamboat Company; Milltown Air Line Railway; Mills Valley & Mt. Tamalpais Scenic Railway Company; Milner & North Side Railroad Company; Minden East & West Railway Company; Minneapolis, Anoka & Cuyuma Range Railway Company; Minneapolis, St. Paul & Ashland Railway Company; Minnesota & Manitoba Railroad Company; Minnesota & Northwestern Railroad Company; Minnesota & North Wisconsin Railroad Company; Minnesota, Dakota & Pacific Railroad Company; Minnesota Transfer Railway Company; Minster & Laramie Railway Company; Minster City, Southern & Western Railroad Company; Mississippi & Alabama Railroad Company; Mississippi Sugar Belt Railroad; Mississippi Valley Railroad Company; Missouri River Packet Company; Modic Northern Railway Company; Mohawk Mining Company's Railroad; Mohawk & Malone Railway Company; Monocacy Valley Railroad Company; Mono Lake Railway & Lumber Company; Monroe & Greenville Railroad Company; The Monroe & Southwestern Railway Company; Montana Eastern Railroad Company; Montana Railway Company; Montauk Steamboat Company, Ltd.; Monte Ne Railway Company; Montgomery & Erie Railway Company; Montreal & Atlantic Railway Company; Montreal & Planters Steamboat Company; Montrose Railroad Company; Moosic Mountain & Carbondale Railroad Company; Morgan Run Railroad Company; Morris & Essex Railroad Company; Morris & Essex Extension Railroad Company; Moshannon Coal Mining Company; Mount Carbon & Port Carbon Railroad Company; Mount Carmel Railroad Company; Mount Gilead Short Line Railroad Company; Mount Holly, Lumberton & Madford Railway Company; Mount Penn Gravity Railroad Company; Mount Pleasant & Broad Ford Railroad Company; Mount Pleasant Southern Railway Company; Mount Washington

Railway Company; Mountain Central Railway Company; Mountain Quarries Company; Mexahala & Bristol Railway Company; Muncie Belt Railway Company; Nantucket Railroad Company; Nantucket Central Railroad Company; Nashua & Acton Railroad; Nashua, Acton & Boston Railroad Company; Nashville & Decatur Railway Company; Nashville & Lowell Railroad Corporation; Nashville Terminal Company; Nashville Terminal Realty Company; Nassau Electric Railroad Company; Natchez, Ball & Shreveport Railway Company; Natchez Pass Railway Company; Natchitoches Railway & Construction Company; National City & Otay Railway Company; National Railroad Company of New Mexico; National Railways of Mexico; National Tube Company's Railroad; Native Lumber Company's Railroad; Natural Bridge Railway Company; Nelson & Fort Sheppard Railway Company; Nesquehoning Valley Railroad Company; Nevada & California Railway Company; Nevada Short Line Railway Company and H. J. Humphreys, Receiver; Newark & Bloomfield Railroad Company; Newark & Hudson Railroad Company; Newark & New York Railroad Company; New Berlin & Winnifield Railroad Company; New Boston Railroad Company; New Castle & Butler Railway Company; Newell Bridge & Railway Company; New England Granite Railroad Company; New Hanover Transit Company's Railroad; New Haven & Dunbar Railroad Company; New Haven & Northampton Company; Newhouse, Copper Gulch & Savior Lake Railroad Company; New Jersey & Pennsylvania Railroad Company and F. V. Pitney, Receiver; New Jersey Junction Railroad Company; Newport & Shermans Valley Railroad Company; Newport News & Hampton Railway Gas & Electric Company; New Westminster Southern Railway Company; Newton Falls & Northern Railroad Company; New York & Cuba Mail Steamship Company; New York & Harlem Railroad Company; New York & Rockaway Beach Railway Company; New York Bay Railroad Company; New York, Brooklyn & Manhattan Beach Railway Company; New York Central & Niagara River Railroad Company; New York Connecting Railroad Company; New York Dock Company's Terminal Railway; New York, Lackawanna & Western Railroad Company; New York Short Line Railroad Company; Niagara Falls Branch Railroad Company; Niagara Navigation Company, Ltd.; Nittany Valley Railroad Company; Noland Land & Transfer Company; Norfolk & Mobjack Steamboat Company; Norfolk County Timber Corporations Railroad; Normans Southeastern Railway Company; Norristown & Main Line Railroad Company; Norristown Junction Railroad Company; North Bend & Eastern Railroad Company; North Brookfield Railroad Company; North Carolina Railroad Company; North Coast Powder Company; North Coast Railroad Company of the State of Washington; Northeast Texas Railway Company; North Pacific Steamship Company; Northern Coal & Iron Company's Railroad; Northern Dakota Railway Company; Northern Steamship Company; Northern Electric Railway Company and U. P. Coughlan, Receiver; Northern Maine Seaport Railroad Company; Northern Michigan Transportation Company; Northern Mississippi Railway Company; Northern Railroad; North Louisiana Railroad Company; North Pennsylvania Railroad Company;

North State Railroad Company; Northern Ohio Railway Company; Northwestern Coal & Mining Company's Railroad; Northwestern Coal Railway Company; Northwestern Improvement Company; Northwestern Lumber Company's Railroad; Northwestern Ohio Railway & Power Company; Northwestern Pennsylvania Railway Company; Northwestern Toll Line Com-

pany; Morton & Northern Railway; Norway Branch Railroad Company; Norwich & New York Propeller Company; Norwich & Worcester Railroad Company; Nowata Pipe Line Company; Nyack & Northern Railroad Company; Oakdale & East Side Railroad Company; Oak Grove & Georgetown Railroad Company; Oakland, Antioch & Eastern Railway; Oberlin & La Grange Railway Company; Ocalla & Southwestern Railroad Company; Ocalla Northern Railroad Company; Ogden & Northwestern Railroad Company; Ohio & Baltimore Short Line Railway Company; Ohio River & Columbus Railway Company; Ohio River Passenger Railway Company; Ohio Sterling Railway Company; Oklahoma & Great Eastern Railroad Company; Oklahoma Railway Company; Oklahoma Southwestern Railway Company; Old Dominion Steamship Company; Old River & Kissatchi Railway; Olean, Bradford & Warren Railway Company; Oleona Railroad Company; Oliver Iron & Steel Company's Railroad; Olive Sternsberg & Company's Timber Company; Omaha Bridge Terminal Company; Old Colony Railroad Company; Oneida Railway Company; Onoway & North Michigan Railway Company; Ontario, Carbondale & Scranton Railway Company; Open River Railway & Navigation Company; Orangeburg Railway; Ore Belt Railroad Company; Oregon Eastern Railway Company; Oregon State Portage Railway; Oregon Trunk Railway Company; Oregon-Washington Railway Company; Orovills & Nelson Railroad Company; Oshkosh Transportation Company; Ostrander Railway & Timber Company; Oswego & Rome Railroad Company; Oswego & Syracuse Railroad Company; Ouachita Valley Railway Company; Owensboro & Nashville Railroad Company; Owl Bayou Railroad; Ozark Valley Railroad Company and R. A. Long, Receiver; Pacific & Eastern Railway; Paroda Railroad Company; Parkersburg Branch Railroad Company; Passaic & Delaware Railroad Company; Passaic & Delaware Extension Railroad Company; Passenger Belt Railway Company; Pattersons Creek & Potomac Railroad Company; Paw Paw Railroad Company; Pearl River & Gulf Railway Company; Pearl River Lumber Company's Railroad; Pearl River Transportation Company; Pecksport Connecting Railway Company; Pe Ell & Columbia River Railway; Pemberton & Hightown Railroad Company (Union Transportation Company, Lessee); Pemigowasset Valley Railroad Company; Peninsular Lumber Company's Railroad; Peninsular Railroad Company; Pennsylvania & Atlantic Railroad Company (Union Transportation Company, Lessee); Pennsylvania & New York Canal & Railroad Company; Pennsylvania Eastern Railroad Company; Pennsylvania, Monongahela & Southern Railroad Company; Pennsylvania Tunnel & Terminal Railroad Company; Pennsylvania Western & Ohio River Connecting Railway Company; Penn Yan & Lake Shore Railway; Pensacola & Perdido Railroad Company; Pensacola, Alabama & Tennessee Railroad Company; Peoples Railway Company; Peoria, Bloomington & Champaign Traction Company; Peoria, Lincoln & Springfield Traction Company; Peoria Northern Railway Company; Peoria Southern Railway Company; Pere Marquette Railroad of Indiana; Perla Southern Railroad Company; Perth Amboy & Woodbridge Railroad Company; Petersborough & Hillsborough Railroad Company; Petersborough Railroad Company; Philadelphia & Baltimore Central Railroad Company; Philadelphia & Beach Haven Railroad Company; Philadelphia & Brigantine Railroad Company; Philadelphia & Delaware County Railroad Company; Philadelphia & Frankfort Railroad Company; Philadelphia & Long Branch Railroad Company; Philadelphia & Reading Terminal Railroad; Philadelphia & Trenton Railroad Company; Philadelphia, Germantown & Norristown Railroad Com-

pany; Philadelphia, Harrisburg & Pittsburgh Railroad Company; Philadelphia, New Orleans Transportation Company; Philip Carey Manufacturing Company's Industrial Railway; Phillipsburg & Susquehanna Valley Railway Company; Phillipsburgh Railroad Company; Pickens & Addison Railway Company; Pickens & Hackers Valley Railroad Company; Piedmont & Northern Railway Company; Pine Bluff & Arkansas River Railway Company; Pinehurst Railroad Company; Pine Bluff, Sheridan & Southern Railway; Pine Run Railroad Company; Pioche & Pacific Transportation Company; Piqua & Troy Branch Railroad Company; Pittsburgh & Castle Shannon Railroad Company (Electric); Pittsburgh & Connellsville Railroad Company; Pittsburgh & Grass Creek Railroad Company; Pittsburgh & Freeport Railroad Company; Pittsburgh & Northern Railroad Company; Pittsburgh & Northeastern Railroad Company; Pittsburgh, Birmingham & Eastern Railroad Company; Pittsburgh County Railway Company; Pittsburgh, McKeesport & Youghiogheny Railroad Company; Pittsburgh Railroad Company; Pittsburgh Terminal Railroad & Coal Company; Pittsburgh, Westmoreland & Somerset Railroad Company; Pittsfield & North Adams Railroad Company; Pittsford & Rutland Railroad Company; Placerville & Lake Tahoe Railway; Plattsburgh & Dannemora Railroad Company; Plymouth Railroad Company; Poshuck Railroad Company; Point Pleasant, Buchannon & Tygert Valley Railroad Company; Pollock & Angelina Valley Transportation Company; Pomeroy & Newark Railroad Company; Ponce & Guayama Railroad Company; Poplar Bluff & Dan River Railway Company; Poplarville Lumber Company's Railroad; Port Arthur, Duluth & Western Railway Company of Minnesota; Portland & Northern Railway Company; Portland & Southeastern Railroad Company; Portland Union Railway Station Company; Port Arthur Canal & Dock Company; Portsmouth & Tagart Valley Railroad Company; Potomac, Fredericksburg & Piedmont Railroad Company; Potomac Railroad Company; Prescott & Reader Railroad Company; Prescott, Reader & Fordyce Railway Company; Prince Edward Island Railway Company; Proctor Coal Company's Railroad; Providence Coal Company's Railroad; Providence & Worcester Railroad Company; Providence, Warren & Bristol Railroad Company; Providence, Webster & Springfield Railroad Company; Pueblo Union Depot & Railroad Company; Puget Sound & Baker River Railway Company; Puget Sound International Railway & Power Company; Pacific Coast Company; Pacific Logging & Timber Company's Railroad; Pacific Portland Cement Company's Railroad; Pacific Mail Steamship Company; Paducah Union Depot Company; Palmer Lumber Company's Railroad; Panther Creek Lumber Company's Railroad; Panther Creek Railroad; Parker Bell Lumber Company's Railroad; Quakertown & Eastern Railroad Company; Qu'Appelle, Long Lake & Saskatchewan Railroad Company; Quebec Central Railway Company; Quebec Oriental Railway Company; Quebec Steamship Company, Ltd.; Quebec & Torch Lake Railroad Company; Quincy Quarries Company's Railroad; Railway Transfer Company of Minneapolis; Raleigh & Western Railway Company; Rapid City Black Hills & Western Railroad Company; Rapides Lumber Company's Railroad; Raritan Terminal & Transportation Company; Rawhide Western Railway Company; Raymondville & Waddington Railroad Company; Reading Belt Railway Company; Red Mountain Railway Company; Red River & Rocky Mount Railroad Company; Red River Lumber Company's Railroad; Red River Valley Railroad Company of Arkansas; Red River Valley Railroad Company of Kentucky; Red Springs & Bowmore Railroad; Register & Glennville Railroad Company; Rensselaer &

Saratoga Railroad Company; Reynoldsville & Falls Creek Railroad Company; Rhode Island & Massachusetts Railroad Company (in Mass.); Richelieu & Ontario Navigation Company, Ltd.; Richmond, Fredericksburg & Potomac & Richmond & Petersburg Connecting Company; Richmond & Rappahannock River Railway Company; Richmond, Rappahannock & Northern Railway; Richmond Washington Railway; Rich Patch Railroad; Ridgway & Clearfield Railroad Company; Rio Grande & Pagosa Springs Railway Company; Rio Grande & Santa Fe Railroad Company; Rio Grande & Southwestern Railroad Company; Rio Grande Gunnison Railroad Company; Rio Grande Junction Railroad Company; Rio Grande, Pueblo & Southern Railroad Company; Rio Grande Railroad Company of Texas; Rio Grande Railway Company; Rio Grand Bengre De Cristo Railroad Company; Rison & Mt. Elba Railroad Company; Riverside & Arlington Railroad Company; Riverside & Gulf Railway Company; Roanoke Railroad & Lumber Company; Roanoke River Railroad Company; Robbins Railroad Company; Robinson Lake & Lumber Company's Railroad; Roby & Northern Railroad Company; Rochester, Hornellsville & Lackawanna Railroad Company; Rochester, New York & Pennsylvania Railroad Company; Rockaway River & Montville Railroad Company; Rockdale Railroad Company; Rockford Belt Railway Company; Rock Island Company; Rock Island Frisco Terminal Railway Company; Rockport, Langdon & Northern Railway Company; Rockport Railroad Company; Rockport, Shenandoah & Des Moines Railway Company; Rockwood & Tennessee River Railway; Rocky Hill Railroad & Transportation Company; Rocky Mount & Northern Railroad; Rocky Mountain Railway Company; Roddis Lumber Company's Railroad;

Rome & Clinton Railroad Company; Rome, Watertown & Ogdensburg Railroad Company; Roper Lumber Company's Railroads; Rose Creek Railroad; Roosevelt & Western Railroad; Rose Hill Sugar Company's Railroad; Roswell Railroad Company; Rowland Lumber Company's Railroad; Rowlesburg & Southern Railroad; Ruddock, Bonnet Carre & Northern Railroad; Rumbarger Lumber Company's Railroad; Rutland Transit Company; Rutland & Whitehall Railroad Company; Sacramento & Woodland Railroad Company and J. P. Coghlan, Receiver; Sacramento Southern Railroad Company; Sacramento Valley Electric Railroad Company; San Antonio Railway Company; San Antonio, Uvalde & Gulf Railroad Company and A. R. Ponder, Receiver; Santa Maria Union Depot Company; Saginaw & Manistee Lumber Company's Railroad; Saginaw & Ouachita River Railroad Company; St. Charles Air Line Railroad; St. Clair & Western Railroad; St. Croix Duluth Railway; St. Francis River Railroad; St. Joseph & Central Branch Railway Company; St. Joseph & Union Depot Company; St. Joseph Chicago Steamship Company; St. Louis & Claire Railroad Company; St. Louis & Illinois Belt Railway; St. Louis & Oklahoma Southern Railway; St. Louis, Decatur & Champaign Railway Company; St. Louis, El Reno & Western Railway Company and A. L. Mills, Receiver; St. Louis, Memphis & Southeastern Railroad Company; St. Louis, San Francisco & New Orleans Railroad Company; St. Louis Terminal Transfer Company; St. Marys & Eastern Railroad Company; St. Marys & Western Railroad Company; St. Marys & Kingsland Railroad Company; St. Marys River Steamboat Company; St. Paul Bridge & Terminal Railway Company; St. Paul Union Depot Company; St. Petersburg Transportation Company; St. Tammany & New Orleans Railway & Ferry Company; Santa Fe Refrigerator Despatch Company; Salina Bayou Railway Company; Saline River Railway Company; Saline Valley Railroad Company; Salisbury &

Albert Railway; Salisbury Railroad Company; Salmon Brick & Lumber Company's Railroad; Salt Lake & Mercur Railroad Company and L. Landis, Receiver; Salt Lake City Union Depot & Railroad Company; San Bernardino & Redlands Railroad Company; Sandersville Railroad Company; Sandusky, Norwalk & Mansfield Electric Railway Company and C. G. Taylor, Receiver; Sanford & Troy Railroad Company; San Francisco & Eureka Railway Company; San Francisco & Napa Railway Company; San Francisco, Napa & Calistoga Railway; Santa Fe, Liberal & Englewood Railroad Company; Santa Fe, Raton & Des Moines Railroad Company; Sarasota & Boyne Transportation Company; Saratoga & Schenectady Railroad Company; Saugerties & New York Steamboat Company; Savage River Railroad Company; Savannah, Hinesville & Western Railroad Company; Sawyer River Railroad Company; Scholarie Valley Railway Company; Schuylkill & Lehigh Railroad Company; Schuylkill Valley Navigation & Railroad Company; Scottac Railway Company; Scott County Railroad; Scotts City Northern Railway Company; Scranton & Spring Brook Railroad Company; Scranton, Dunmore & Moosic Lake Railroad Company; Seaboard Company; Seaboard & Gulf Steamship Company; Seattle Southeastern Railway Company; Sevier Railway Company; Shamokin, Sunbury & Lewisburg Railroad Company; Shamokin Valley & Pottsville Railroad Company; Shamrock & Western Railway Company; Shaver Lake Railroad; Shelby County Railway Company; Shenandoah Iron & Coal Company's Railroad; Sheridan & Williamina Railroad Company; Shinglehouse Railroad; Shreveport Bridge & Terminal Railroad; Sierra Nevada Wood & Lumber Company's Railroad; Sierra Valley Railway Company; Sieata Longboat Steamship Company; Silber City Mines, Altos & Mongollon Railroad Company; Silver Lake Railway Company; Silver Lake Railway & Lumber Company; Silver Peak Railroad Company; Silver Springs & Western Railroad Company; Silverton Lumber Company's Railroad; Simpson Railroad; Sharon & Wheatland Street Railway Company; Skagit River Navigation & Trading Company; Skinner Car Ferry Company; Slate Run Railroad Company; Sligo Furnace Company's Logging Railroad; W. T. Smith Lumber Company's Railroad; Smithonia & Dunlap Railroad Company; Smithonia, Danielsville & Gainesville Railroad Company; Somerset & Cambria Railroad Company; Songo River Line, Incorporated; Snake River Valley Railway Company; Shore Line Railroad Company; South Branch Railroad Company of New Jersey; South Branch Railway Company; South Easton & Phillipsburg Railroad Company; South Carolina Western Railway Company; Southeastern Ohio Railway Company; Southern Illinois & Missouri Bridge Company; Southern Illinois Railway & Power Company; Southern Oregon Traction Company; Southern Pennsylvania Railway & Mining Company; Southern Railway & Power Company; Southern States Lumber Company's Railroad; South Florida & Gulf Railway Company; South Park & Leadville Short Line Railroad; South San Francisco Belt Railway; Southwestern Railway Company of Oregon; Southern Extension Railway Company; Southern Railway & Navigation Company; Southeastern Railway Company of Texas; South Wilmington & Southern Railroad Company; Sparrow Kroll Logging Railway; Spokane, Falls & Northern Railway Company; Springfield & Northeastern Railway Company; Springfield Belt Railway Company; Springfield, Troy & Piqua Railroad Company; Spuytan Duyvil & Port Morris Railroad Company; Standard & Hernando Railroad Company; Standard Railway & Timber Company; State Line & Sullivan Railroad Company; Steple Valley Smelting & Mining Company's Railroad; Steuben-

ville & Wheeling Traction Company; Steubenville Extension & Pennsylvania Railroad; Steubenville, Wellsburg & Weirton Railway Company; A. W. Stevens Lumber Company's Railroad; Stockyards Terminal Railway Company; Stonington & Watch Hills Ferry Company; Straight Creek Coal & Coke Company's Railroad; Strassburg Railroad Company; Strouds Creek & Muddlety Railroad Company; Sturgis, Goshen, Saint Louis Railway Company; Stuttgart & Rice Belt Railroad Company, and G. N. Peay, Receiver; Sulphur Mining & Railroad Company; Summit Branch Mining Company's Railroad; Summer Phosphate Company's Railroad; Suncock Valley Railroad Company; Superior & Southeastern Railway Company; Surray, Sussex & Southeastern Railway Company; Survey & Fort Myers Line; Susquehanna & Buffalo Railway; Susquehanna & Eagles Mere Railroad Company; Susquehanna River & Western Railroad Company; Suwanee River & White Sulphur Springs Railway Company; Swartz & Ouachita City Railroad Company; Sylacauga & Wetumpka Railroad; Syracuse & Baldwinsville Railway Company; Syracuse & Milford Railway Company; Takoma, Olympia & Chehalis Valley Railway Company; Tallahassee & Gulf Railroad Company; Tallahassee & Montgomery Railway Company; Tama & Toledo Electric Railway & Light Company; Tampa Bay Transportation Company; Tavares & Gulf Railroad Company; Tatum Lumber Company's Railroad; Tehauntepec National Railway Company; Tennessee Copper Company's Railroad; Tennessee River Navigation Company; T. W. Thayer Company's Railroad; Thomas & Sayreton Railroad; Thompson & Northern Railroad; Thompson Run Coal & Railroad Company; Three Lakes Lumber Company's Railroad; Ticonderoga Railroad Company; Tidewater & Western Railroad Company; Tidewater Power Company; Timpson & Henderson Railway Company; Tintic Range Railroad Company; Tioga & Southeastern Railroad Company; Tionesta Valley & Hickory Railway Company; Tipton Railroad Company; Tivolia Hollow Railroad Company; Toledo & Chicago Railroad Company; Toledo & Rousford Railroad Company; Toledo Belt Railway Company; Toledo, Canada Southern & Detroit Railway Company; Toledo, Ottawa Beach & Northern Railway Company; Toledo Southeastern Railway Company; Toledo Terminal Railroad Company; Tomahawk & Eastern Railway Company; Tombstone & Southern Railroad Company; Tonawanda Island Bridge Company; Towles Steamboat Line; Transportation Railway; Trenton Transportation Company; Tresokow Railroad Company; Trexler & Turrell Lumber Company's Railroad; Trinity County Lumber Company's Railroad; Tri State Lumber Company's Railroad; Troy & Bennington Railroad Company; Troy & Greenbush Railroad Association; Tuckahoe & James River Railroad Company; Tuskegee Railroad Company; Twin Buttes Railroad; Twin City Belt Railway Company; Unicoi Railway; Union Depot & Railway Company (Denver, Colo.); Union Depot Bridge & Terminal Railroad Company; Union Depot Company (Columbus, O.); Union Freight Railroad Company; Union Pinepolis Saw Tram Road; Union Railroad Company of New York; Union Springs & Northern Railway Company;

Union Steamboat Line; Union Stock Yards & Transit Company; Union Terminal Railway Company (St. Louis, Mo.); Union Terminal Railroad Company (Sioux City, Ia.); Union Terminal Railroad Company (Buffalo, N. Y.); Union Town & Lickrun Railroad Company; Union Terminal Railroad Company; United New Jersey Railroad & Canal Company; United Steamship Company; United Verde & Pacific Railway Company; Union County Railroad Company; Utah Central Railroad Company; Utah Rail-

way Company; Utica & Black River Railroad Company; Utica, Chenango & Susquehanna Valley Railway Company; Utica, Clinton & Binghampton Railroad Company; Valley Connecting Railroad Company; Valley Railroad Company of New York; Valley River Railroad Company; Valley Street Railway Company; Valparaiso & Northern Railway Company; Vancouver, Victoria & Eastern Railway & Navigation Company; Vanderbilt Timber, Mining & Southwestern Railway Company; Vermont & Massachusetts Railroad Company; Vermont & Providence Line Railroad Company; Vernon, Greensburg & Rushville Railroad Company; Versailles & Seadlia Railroad Company; Victoria & Sidney Railway Company; Victoria Electric Railroad Company; Vincentown Branch of the Burlington County Railroad Company; Vinegar Bend Lumber Company's Railroad; Vinton Lumber Company's Railroad; Virginia & Southwestern Railway Company; Virginia & Mt. Airy Railway Company; Virginia Air Line Railway Company; Virginia Anthracite Coal & Railway Company; Virginia, Carolina & Southern Railway Company; Virginia Midland Railway Company; Virginia Navigation Company; Virginia Ore & Lumber Company's Railroad; Virginia & Potts Creek Railroad Company; Waccamaw Railroad; Wainhurst Railroad; Wallace Tugboat & Transportation Company, Inc.; Walkersville & Ireland Railway Company; Walsenburg & Western Railway Company; Ware River Railroad Company; Warren & Saline River Railroad Company; Warren Railroad Company; Warrenton Railroad Company; Warrier Southern Railway Company; Washington & Choctaw Railway; Washington & Glen Echo Railroad Company; Washington & Great Falls Railway & Power Company; Washington & Rockville Railway Company; Washington Central Railway Company; Washington Electric Railway Company; Washington Interurban Railroad Company; Washington Railway & Electric Company; Wautauga & Yadkin Railroad Company and W. J. Grandis, Receiver; Wautauga Railroad Company; Frank Waterhouse & Company, Incorporated; Waukegan, Rockford & Elgin Traction Company and R. C. Peck, Receiver; Webber Falls Railroad Company; Wellsburg & State Line Railroad Company; Wellsville & Buffalo Railroad Corporation; Wenatches Valley & Northern Railway Company; West Clarion Railroad Company; Westerman Coal & Iron Railroad; Western & Pacific Railroad Company; Western Arizona Railway Company; Western Illinois Railway Company; Western Redwood Lumber Company's Railroad; Western Transit Company; Western Transportation Company; Western Washington Railroad Company; Westinghouse Inter Work Railway Company; Weston Lumber Company's Railroad; West Virginia & Southern Railroad Company; West Virginia Midland Railroad Company; West Virginia Short Line Railroad Company; Wharton & Northern Railroad Company; Wharton Valley Railway Company; Whitcomb & Morris Railway Company; Whitecastle & Lake Natchez Railroad; White Deer & Loganton Railway Company; White Deer Valley Railroad Company; White Oak Railway Company; Whites Creek Lumber Company's Railroad; White Sulphur Springs & Yellowstone Park Railway Company; White Top Railway Company; Whiteville Lumber Company's Railroad; Whitney Transportation Company; Whitney Company's Railroad; Wheatland Street Railway Company; Wichita Falls Railway Company; Wilcox & Phillips Boat Line; Wilcox Railroad; Wilkes-Barre & Scranton Railway Company; Wilkes-Barre Terminal Railroad Company; Willston & Jackson Belt Railway Company; Wilton & Northern Railroad; Wilton Railroad Company; Winfield, Texas

& Gulf Railway Company; Winifreds Railroad Company; Winnsboro Granite Corporation's Railroad; Winona & Western Railroad; Wiscassett, Waterville & Farmington Railway Company; Wisconsin, Minnesota & Pacific Railroad Company; Withlacoochee Transportation Company; Woodward Iron Company's Railroad; Wood River Branch Railroad Company; Woolridge Jellico Coal Company's Railroad; Worcester Consolidated Street Car Company; Worcester, Nashua & Rochester Railroad Company; Wyndotte & Southeastern Railway Company; Wyatt & Donavon Railroad; Wyoming & Pond Creek Railroad; Yankton & Western Railway Company; Yellowstone Park Railway Company; Yellowstone Park Railroad Company (Idaho); Yellowstone Park Railroad Company (of Montana); Yellowstone Park Railway; York, Hanover & Frederick Railroad Company; Yosemite Short Line Railway Company; Youghiogheny & Wick Haven Railroad Company; Youngstown & Austintown Railroad Company; Youngstown & Sharon Street Railway Company; Youngstown & Southern Railway Company; Youngstown Sheet & Tube Company's Railroad; Zanesville Belt Terminal Railway Company; Zanesville Terminal Railroad Company; Zimmerman, Leesville & Southwestern Railway Company; Zuni Mountain Railroad; Alabama-Tennessee & Northern Railway; Albemarle Steam Navigation Company; Arkansas Railroad Company; Buffalo, Bradford & Kane Railroad Company; Caro Northern Railway Company; Carolina & Northeastern Railroad Company; Chicago & Detroit Steamship Lines; Ft. Smith, Poteau & Western Railroad Company; Galesburg & Western Railroad Company; The Grand Rapids, Holland & Chicago Railway Company; Kane Railroad Company; Keating & Smethport Railroad Company; Kushequa Railroad Company; Lawrenceville Branch Railroad Company; Louisville Bridge & Terminal Railway Company; Manila & Southwestern Railroad Company; Marcellus & Otisco Lake Railway; Meade Run Railroad Company; Middle Tennessee Railroad; Phar & Chotin Barge Service; Richmond-New York Steamship Company; The Shore Line Electric Railway Company and R. W. Perkins, Temporary Receiver; Smethport Railroad Company; Southern Utah Railroad Company; Wolvin Line; Quincy Railroad Company; respondents.

It appearing, That by order dated March 22, 1921, the commission entered upon an investigation into and concerning the reasonableness and propriety of car-distribution rules so far as they apply to privately owned coal cars and cars furnished for railway-fuel coal, with a view to prescribing such just and reasonable rule or regulation as might appear to be necessary;

It further appearing, That said order dated March 22, 1921, was served in the manner provided by law upon all carriers by railroad in the United States subject to the interstate commerce act, said carriers being listed above and hereinafter referred as as respondents;

It further appearing, That a full investigation of the matters and things involved has been had with respect to carriers serving bituminous-coal mines, and that the commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

And it further appearing, That no reason appears for the continuance of the investigation as to carriers serving solely anthracite-coal mines:

It is ordered, That each of the respondents be, and each is hereby, notified and required to cease and desist, on or before September 1, 1923, and thereafter to abstain, from maintaining and enforcing, in so far as such respondent maintains and enforces, a regulation or practice whereby in the distribution of cars for the transportation of coal among the bituminous-coal mines served by such respondent, whether located upon its line or customarily dependent upon it for car supply, private cars or cars for the loading of bituminous coal for railway fuel are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars.

It is further ordered, That each of the respondents which distributes cars to bituminous coal mines located upon its line or customarily dependent upon it for car supply be, and each is hereby, notified and required to establish on or before September 1, 1923, and thereafter to maintain and enforce a regulation and practice whereby all cars distributed by such respondent to such mines must be distributed on a pro rata basis, and if cars are assigned or consigned to any of such mines and if such cars are placed at the mines to which assigned or consigned, they must be so placed that every mine on the same division or district established by respondent for the distribution of cars shall receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars must be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged.

It is further ordered, That the present investigation, so far as it in terms covers the distribution of cars at anthracite mines, be, and it is hereby, discontinued.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES,(a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1923.

ICC DOCKETS NO. 12530

1923 WEEK ENDING	1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January 6	395,462	231,218	58	199,532	9,977,000	19,773,000	*Information not Available	10,993,000	*Information not Available.	*Information not Available.
13	443,701	228,209	51	203,759	10,188,000	22,185,000	"	11,217,000	"	"
20	442,864	221,423	50	197,769	9,888,000	22,143,000	"	10,925,000	"	"
27	431,024	222,478	52	198,333	9,917,000	21,551,000	"	10,985,000	"	"
February 3	435,107	218,592	50	192,439	9,622,000	21,755,000	"	10,686,000	"	"
10	435,971	222,682	51	193,123	9,656,000	21,799,000	"	10,725,000	"	"
17	440,842	216,560	49	187,388	9,369,000	22,042,000	"	10,431,000	"	"
24	433,330	211,423	49	185,164	9,258,000	21,667,000	"	10,324,000	"	"
March 3	428,884	226,314	53	195,657	9,783,000	21,444,000	"	10,946,000	"	"
10	397,558	231,483	58	190,708	9,535,000	19,878,000	"	10,628,000	"	"
17	387,612	231,554	60	185,485	9,274,000	19,381,000	"	10,428,000	"	"
24	373,718	227,689	61	186,149	9,307,000	18,686,000	"	10,424,000	"	"
31	363,473	231,925	64	185,798	9,290,000	18,174,000	"	10,430,000	"	"
April 7	317,732	216,303	68	169,320	8,466,000	15,887,000	"	9,629,000	"	"
14	328,927	225,394	69	184,069	9,203,000	16,446,000	"	10,401,000	"	"
21	317,218	221,885	70	180,042	9,002,000	15,861,000	"	10,221,000	"	"
28	309,696	220,093	71	178,313	8,916,000	15,485,000	"	10,103,000	"	"
May 5	303,773	219,235	72	178,052	8,903,600	15,189,000	"	10,061,000	"	"
12	299,914	224,807	75	180,235	9,012,000	14,996,000	"	10,175,000	"	"
19	298,809	226,238	76	181,663	9,083,000	14,940,000	"	10,270,000	"	"
26	296,158	245,887	83	196,118	9,806,000	14,808,000	"	11,049,000	"	"
June 2	267,108	226,147	85	178,701	8,935,000	13,355,000	"	10,091,000	"	"
9	287,160	245,536	86	189,562	9,478,000	14,358,000	"	10,676,000	"	"
16	281,047	240,282	85	187,517	9,376,000	14,052,000	"	10,573,000	"	"
23	272,569	240,451	88	184,627	9,231,000	13,628,000	"	10,422,000	"	"
30	269,575	241,990	90	185,660	9,283,000	13,479,000	"	10,458,000	"	"
July 7	214,608	224,373	105	153,916	7,696,000	10,730,000	"	8,742,000	"	"
14	258,251	270,776	105	195,256	9,763,000	12,913,000	"	10,925,000	"	"
21	258,001	265,615	103	190,772	9,539,000	12,900,000	"	10,676,000	"	"
28	257,996	259,512	101	193,187	9,659,000	12,900,000	"	10,817,000	"	"
August 4	257,333	256,126	100	189,004	9,450,000	12,867,000	"	10,564,000	"	"
11	230,379	241,232	105	176,190	8,810,000	11,519,000	"	9,851,000	"	"
18	260,784	270,147	104	194,817	9,741,000	13,039,000	"	10,843,000	"	"
25	269,638	280,292	104	205,227	10,261,000	13,482,000	"	11,383,000	"	"
September 1	288,109	276,480	96	212,109	10,605,000	14,405,000	"	11,633,000	"	"
8	249,894	238,984	93	187,983	9,399,000	12,495,000	"	10,485,000	"	"
15	270,842	256,591	95	205,897	10,295,000	13,542,000	"	11,378,000	"	"
22	269,946	261,768	97	206,963	10,348,000	13,497,000	"	11,454,000	"	"
29	266,769	260,730	98	205,233	10,262,000	13,338,000	"	11,347,000	"	"
October 6	247,422	246,312	100	193,275	9,664,000	12,371,000	"	10,669,000	"	"
13	251,357	251,044	100	198,799	9,940,000	12,568,000	"	10,953,000		
20										
27										
November 3										
10										
17										
24										
December 1										
8										
15										
22										
29										

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.
* Information not published by Geological Survey.

Information shown in column 8 taken from weekly reports coal production of U.S. Geological Survey.

October 30, 1923.

(3)

ASSIGNED CAR CASES, NOS. 709, 710, 711, 712.

BRONSON EXHIBIT R-54.

Bronson Ex. R.

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES, (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1922.

ICC DOCKETS NO. 12530

1922 WEEK ENDING	1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January 7	174,590	243,119	139	138,396	6,920,000	8,730,000	47.0	7,476,000	15,906,000	556,000
14	196,184	267,848	137	153,770	7,689,000	9,809,000	46.2	8,302,000	17,970,000	613,000
21	204,871	278,865	136	163,134	8,157,000	10,244,000	48.8	8,782,000	17,996,000	625,000
28	220,787	277,527	126	179,127	8,956,000	11,039,000	53.5	9,615,000	17,792,000	659,000
February 4	224,635	280,083	125	180,567	9,028,000	11,232,000	54.0	9,714,000	17,989,000	686,000
11	233,547	291,002	125	191,808	9,590,000	11,677,000	57.4	10,309,000	17,960,000	719,000
18	237,893	293,798	124	190,893	9,549,000	11,895,000	57.1	10,285,000	18,012,000	736,000
25	238,862	291,380	122	192,340	9,617,000	11,943,000	57.8	10,402,000	17,997,000	785,000
March 4	243,458	299,231	123	195,615	9,781,000	12,173,000	58.6	10,541,000	17,988,000	760,000
11	251,266	308,195	123	206,183	10,309,000	12,563,000	61.8	11,102,000	17,964,000	793,000
18	251,327	314,877	125	201,471	10,074,000	12,566,000	60.3	10,843,000	17,982,000	769,000
25	263,471	332,090	126	212,376	10,619,000	13,174,000	63.7	11,448,000	17,972,000	829,000
April 1	252,747	325,501	129	193,164	9,658,000	12,637,000	58.0	10,469,000	18,050,000	811,000
8	97,918	165,102	169	66,825	3,341,000	4,896,000	**Miners' Strike	3,835,000	**Miners' Strike	** Miners' Strike
15	91,096	148,929	163	64,513	3,226,000	4,555,000	"	3,656,000	"	"
22	92,545	146,083	158	64,367	3,218,000	4,627,000	"	3,575,000	"	"
29	99,462	131,780	132	75,708	3,785,000	4,973,000	"	4,175,000	"	"
May 6	101,195	136,542	135	75,447	3,772,000	5,060,000	"	4,164,000	"	"
13	104,913	141,290	135	80,511	4,026,000	5,246,000	"	4,433,000	"	"
20	104,118	124,749	120	81,405	4,070,000	5,206,000	"	4,481,000	"	"
27	113,748	146,362	129	89,029	4,451,000	5,687,000	"	4,889,000	"	"
June 3	107,671	128,753	120	83,983	4,199,000	5,384,000	"	4,616,000	"	"
10	115,060	137,236	119	93,570	4,679,000	5,753,000	"	5,136,000	"	"
17	122,262	146,389	120	91,407	4,570,000	6,113,000	"	5,013,000	"	"
24	127,065	148,713	117	97,966	4,898,000	6,353,000	"	5,363,000	"	"
July 1	124,721	133,787	107	95,411	4,771,000	6,236,000	"	5,266,000	"	"
8	102,714	110,290	107	66,875	3,344,000	5,136,000	"	3,678,000	"	"
15	130,004	110,064	85	75,376	3,769,000	6,500,000	"	4,123,000	"	"
22	134,442	96,849	72	67,261	3,363,000	6,722,000	"	3,692,000	"	"
29	142,303	100,476	71	71,423	3,571,000	7,115,000	"	3,952,000	"	"
August 5	128,565	110,366	86	78,153	3,908,000	6,428,000	"	4,313,000	"	"
12	143,247	117,946	82	83,723	4,186,000	7,162,000	"	4,606,000	"	"
19	153,906	120,934	79	83,498	4,175,000	7,695,000	"	4,609,000	"	"
26	215,011	177,369	82	123,387	6,169,000	10,751,000	"	6,736,000	"	"
September 2	293,839	230,451	78	173,186	8,659,000	14,692,000	* Information not Available	9,359,000	* Information not Available	* Information not Available
9	292,874	214,063	73	162,492	8,125,000	14,644,000	"	8,791,000	"	"
16	350,861	219,692	63	181,352	9,068,000	17,543,000	"	9,737,000	"	"
23	367,616	212,685	58	181,346	9,067,000	18,381,000	"	9,747,000	"	"
30	381,878	211,061	55	182,158	9,108,000	19,094,000	"	9,822,000	"	"
October 7	391,941	207,759	53	180,163	9,008,000	19,597,000	"	9,736,000	"	"
14	404,098	211,214	52	186,952	9,348,000	20,205,000	"	10,110,000	"	"
21	415,511	215,943	52	191,355	9,568,000	20,776,000	"	10,378,000	"	"
28	421,957	224,158	53	196,342	9,817,000	21,098,000	"	10,683,000	"	"
November 4	418,172	225,355	54	196,353	9,818,000	20,909,000	"	10,666,000	"	"
11	388,512	214,768	55	185,387	9,269,000	19,426,000	"	10,147,000	"	"
18	426,277	233,336	55	205,213	10,261,000	21,314,000	"	11,215,000	"	"
25	429,809	229,036	53	202,305	10,115,000	21,490,000	"	11,038,000	"	"
December 2	383,174	216,317	56	188,345	9,417,000	19,159,000	"	10,387,000	"	"
9	426,823	239,278	56	206,768	10,338,000	21,341,000	"	11,495,000	"	"
16	428,325	229,549	54	194,216	9,711,000	21,416,000	"	10,666,000	"	"
23	441,903	207,863	47	185,107	9,255,000	22,095,000	"	10,031,000	"	"
30	365,743	223,374	61	185,552	9,278,000	18,287,000	"	10,171,000	"	"

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3 and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.

*Information not published by Geological Survey.

October 30, 1923.

Information shown in columns 7 and 8 taken from weekly reports coal production of U.S. Geological Survey.
Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 8.

** Information not available account of Miners' Strike.

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES. (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1922

ICC DOCKETS NOS. 12530 & 13896
GUTHEIM EXHIBIT NO. 103.

1922 WEEK ENDING		1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January	7	174,590	243,119	139	138,396	6,920,000	8,730,000	47.0	7,476,000	15,906,000	556,000
	14	196,184	267,848	137	153,770	7,689,000	9,809,000	46.2	8,302,000	17,970,000	613,000
	21	204,871	278,865	136	163,134	8,157,000	10,244,000	48.8	8,782,000	17,996,000	625,000
	28	220,787	277,527	126	179,127	8,956,000	11,039,000	53.5	9,615,000	17,972,000	659,000
February	4	224,635	280,083	125	180,567	9,028,000	11,232,000	54.0	9,714,000	17,989,000	686,000
	11	233,547	291,002	125	191,808	9,590,000	11,677,000	57.4	10,309,000	17,960,000	719,000
	18	237,893	293,798	124	190,983	9,549,000	11,895,000	57.1	10,285,000	18,012,000	736,000
	25	238,862	291,380	122	192,340	9,617,000	11,943,000	57.8	10,402,000	17,997,000	785,000
March	4	243,458	299,231	123	195,615	9,781,000	12,173,000	58.6	10,541,000	17,988,000	760,000
	11	251,266	308,195	123	206,183	10,309,000	12,563,000	61.8	11,102,000	17,964,000	793,000
	18	251,327	314,877	125	201,471	10,074,000	12,566,000	60.3	10,843,000	17,982,000	769,000
	25	263,471	332,090	126	212,376	10,619,000	13,174,000	63.7	11,448,000	17,972,000	829,000
April	1	252,747	325,501	129	193,164	9,658,000	12,637,000	58.0	10,469,000	18,050,000	811,000
	8	97,918	165,102	169	66,825	3,341,000	4,896,000	** Miners' Strike	3,835,000	**Miners' Strike	** Miners' Strike
	15	91,096	148,929	163	64,515	3,226,000	4,555,000	"	3,656,000	"	"
	22	92,545	146,083	158	64,367	3,218,000	4,627,000	"	3,575,000	"	"
	29	99,462	131,780	132	75,708	3,785,000	4,973,000	"	4,175,000	"	"
May	6	101,195	136,542	135	75,447	3,772,000	5,060,000	"	4,164,000	"	"
	13	104,913	141,290	135	80,511	4,026,000	5,246,000	"	4,433,000	"	"
	20	104,118	124,749	120	81,405	4,070,000	5,206,000	"	4,481,000	"	"
	27	113,748	146,362	129	89,029	4,451,000	5,687,000	"	4,889,000	"	"
June	3	107,671	128,753	120	85,983	4,199,000	5,384,000	"	4,616,000	"	"
	10	115,060	137,236	119	93,570	4,679,000	5,753,000	"	5,136,000	"	"
	17	122,262	146,389	120	91,407	4,570,000	6,113,000	"	5,013,000	"	"
	24	127,065	148,713	117	97,966	4,898,000	6,353,000	"	5,363,000	"	"
July	1	124,721	133,787	107	95,411	4,771,000	6,236,000	"	5,226,000	"	"
	8	102,714	110,290	107	66,875	3,344,000	5,136,000	"	3,678,000	"	"
	15	130,004	110,064	85	75,376	3,769,000	6,500,000	"	4,123,000	"	"
	22	134,442	96,849	72	67,261	3,363,000	6,722,000	"	3,692,000	"	"
	29	142,303	100,476	71	71,423	3,571,000	7,115,000	"	3,952,000	"	"
August	5	128,565	110,366	86	78,153	3,908,000	6,428,000	"	4,313,000	"	"
	12	143,247	117,946	82	83,723	4,186,000	7,162,000	"	4,606,000	"	"
	19	153,906	120,934	79	83,498	4,175,000	7,695,000	"	4,609,000	"	"
	26	215,011	117,369	82	123,387	6,169,000	10,751,000	"	6,736,000	"	"
September	2	293,839	230,451	78	173,186	8,659,000	14,692,000	* Information not Available	9,359,000	* Information not Available	* Information not Available
	9	292,874	214,063	73	162,492	8,125,000	14,644,000	"	8,791,000	"	"
	16	350,861	219,692	63	181,352	9,068,000	17,543,000	"	9,737,000	"	"
	23	367,616	212,685	58	181,346	9,067,000	18,381,000	"	9,747,000	"	"
	30	381,878	211,061	55	182,158	9,108,000	19,094,000	"	9,822,000	"	"
October	7	391,941	207,759	53	180,163	9,008,000	19,597,000	"	9,736,000	"	"
	14	404,096	211,214	52	186,952	9,348,000	20,205,000	"	10,110,000	"	"
	21	415,511	215,943	52	191,355	9,568,000	20,776,000	"	10,378,000	"	"
	28	421,957	224,158	53	196,342	9,817,000	21,098,000	"	10,683,000	"	"
November	4	418,172	225,355	54	196,353	9,818,000	20,909,000	"	10,666,000	"	"
	11	388,512	214,768	55	185,387	9,269,000	19,426,000	"	10,147,000	"	"
	18	426,277	233,336	55	205,213	10,261,000	21,314,000	"	11,215,000	"	"
	25	429,809	229,036	53	202,305	10,115,000	21,490,000	"	11,038,000	"	"
December	2	383,174	216,317	56	188,345						
	9										
	16										
	23										
	30										

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.

* Information not published by Geological Survey December 11, 1922.

Information shown in columns 7 and 8 taken from weekly reports coal production of U.S. Geological Survey.
Information shown in column 9 deduced from columns 7 and 8
Information shown in column 10 deduced from columns 5 and 8.

** Information not available account of Miners' strike.

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES. (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1921.

ICC DOCKETS NOS. 12530 & 13896
GUTHEIM EXHIBIT NO.

1921 WEEK ENDING	1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January 1	238,888	266,868	112	178,108	8,905,000	11,944,000	67.0	9,633,000	14,375,000	728,000
8	249,333	306,295	123	196,429	9,821,000	12,467,000	66.0	10,783,000	16,308,000	942,000
15	233,597	288,211	123	180,160	9,008,000	11,680,000	57.3	9,936,000	17,340,000	928,000
22	221,185	271,393	123	167,780	8,389,000	11,059,000	53.2	9,184,000	17,263,000	795,000
29	200,885	256,433	128	155,680	7,784,000	10,044,000	47.4	8,570,000	18,080,000	786,000
February 5	194,670	256,449	132	147,521	7,376,000	9,734,000	45.4	8,132,000	17,911,000	756,000
12	184,770	255,507	138	142,981	7,149,000	9,239,000	43.6	7,859,000	18,025,000	710,000
19	178,925	252,334	141	136,722	6,836,000	8,946,000	41.1	7,489,000	18,221,000	653,000
26	178,178	245,297	138	137,790	6,890,000	8,909,000	42.8	7,432,000	17,364,000	542,000
March 5	175,657	242,568	138	133,527	6,676,000	8,783,000	40.1	7,278,000	18,149,000	602,000
12	168,169	239,271	142	126,366	6,318,000	8,408,000	37.4	6,900,000	18,449,000	582,000
19	162,478	239,002	147	119,604	5,980,000	8,124,000	36.1	6,512,000	18,038,000	532,000
26	161,778	249,348	154	119,599	5,980,000	8,089,000	36.0	6,457,000	17,936,000	477,000
April 2	145,403	230,327	158	107,312	5,366,000	7,270,000	36.1	5,822,000	16,127,000	456,000
9	144,468	230,223	159	113,102	5,655,000	7,223,000	33.1	6,120,000	18,489,000	465,000
16	150,867	230,030	152	120,862	6,043,000	7,543,000	35.8	6,528,000	18,234,000	485,000
23	154,680	224,058	145	126,855	6,343,000	7,734,000	38.0	6,815,000	17,934,000	472,000
30	159,085	221,351	139	130,090	6,505,000	7,954,000	38.8	6,984,000	18,000,000	479,000
May 7	164,639	231,288	140	136,752	6,838,000	8,232,000	40.7	7,391,000	18,159,000	553,000
14	175,052	239,199	137	149,349	7,467,000	8,753,000	44.4	8,009,000	18,038,000	542,000
21	178,911	239,387	134	148,707	7,435,000	8,946,000	44.3	7,989,000	18,033,000	554,000
28	182,003	246,295	135	151,772	7,589,000	9,100,000	45.5	8,166,000	17,947,000	577,000
June 4	157,090	220,193	140	127,928	6,396,000	7,855,000	44.4	6,835,000	15,394,000	439,000
11	177,123	248,817	140	149,072	7,454,000	8,856,000	44.1	8,010,000	18,163,000	556,000
18	170,878	245,847	144	141,218	7,061,000	8,544,000	41.9	7,551,000	18,021,000	490,000
25	174,035	243,069	140	143,977	7,199,000	8,702,000	42.8	7,704,000	18,000,000	505,000
July 2	171,805	240,223	140	143,164	7,158,000	8,590,000	42.6	7,658,000	17,976,000	500,000
9	138,565	202,846	146	114,804	5,740,000	6,928,000	42.0	6,165,000	14,678,000	425,000
16	167,927	241,625	144	137,226	6,861,000	8,396,000	41.2	7,401,000	17,963,000	540,000
23	168,843	242,260	143	138,723	6,936,000	8,442,000	40.8	7,380,000	18,088,000	444,000
30	166,351	237,334	143	138,944	6,947,000	8,318,000	40.5	7,319,000	18,072,000	372,000
August 6	166,135	236,279	142	136,070	6,804,000	8,307,000	39.7	7,186,000	18,100,000	382,000
13	175,107	243,803	139	146,136	7,307,000	8,755,000	43.0	7,771,000	18,072,000	464,000
20	175,405	242,826	138	143,655	7,183,000	8,770,000	42.8	7,708,000	18,009,000	525,000
27	179,804	247,087	137	145,918	7,296,000	8,990,000	43.1	7,753,000	17,988,000	457,000
September 3	175,587	244,362	139	142,749	7,137,000	8,779,000	42.3	7,606,000	17,981,000	469,000
10	162,668	228,277	140	133,000	6,650,000	8,133,000	42.6	7,083,000	16,626,000	433,000
17	186,887	256,226	137	152,285	7,614,000	9,344,000	45.6	8,187,000	17,953,000	573,000
24	193,660	258,682	134	159,766	7,988,000	9,683,000	47.5	8,527,000	17,951,000	539,000
October 1	199,268	260,308	131	166,313	8,316,000	9,963,000	49.3	8,890,000	18,032,000	574,000
8	204,927	266,966	130	170,362	8,518,000	10,246,000	50.5	9,134,000	18,087,000	616,000
15	219,356	271,651	124	181,119	9,056,000	10,968,000	53.9	9,711,000	18,016,000	655,000
22	243,778	282,929	116	205,780	10,289,000	12,189,000	61.4	11,049,000	17,995,000	760,000
29	252,473	265,745	105	204,733	10,237,000	12,624,000	60.9	10,956,000	17,990,000	719,000
November 5	222,671	258,553	116	173,801	8,690,000	11,134,000	51.5	9,327,000	18,110,000	637,000
12	202,476	253,530	125	157,846	7,892,000	10,124,000	52.6	8,592,000	16,334,000	700,000
19	209,443	279,424	133	165,187	8,259,000	10,472,000	49.3	8,871,000	17,993,000	612,000
26	171,953	243,621	142	131,541	6,577,000	8,558,000	46.8	7,101,000	15,173,000	524,000
December 3	177,697	265,652	149	131,593	6,580,000	8,885,000	39.5	7,105,000	17,987,000	525,000
10	178,339	268,990	151	135,310	6,766,000	8,917,000	40.5	7,312,000	18,054,000	546,000
17	173,508	262,960	152	130,201	6,510,000	8,675,000	39.2	7,063,000	18,017,000	553,000
24	180,386	264,143	146	137,782	6,889,000	9,019,000	41.3	7,450,000	18,038,000	561,000
31	150,199	220,319	147	110,721	5,536,000	7,510,000	39.9	5,986,000	15,002,000	450,000

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.

Information shown in columns 7 and 8 taken from weekly reports coal production of U.S. Geological Survey.
Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 8.

December 11, 1922.

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES. (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1920

ICC Dockets Nos. 12530 & 13896
GUTHEIM EXHIBIT No.

1920 WEEK ENDING	1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN'D TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January 3	263,453	259,271	98	193,580	9,679,000	13,172,000	78.2	11,062,000	14,145,000	1,383,000
10	299,306	247,726	83	201,728	10,086,000	14,965,000	67.8	11,323,000	16,700,000	1,237,000
17	310,749	337,319	109	204,363	10,218,000	15,537,000	65.4	11,507,000	17,594,000	1,289,000
24	306,091	219,484	72	185,879	9,294,000	15,304,000	59.5	10,464,000	17,586,000	1,170,000
31	316,457	213,952	68	186,213	9,310,000	15,822,000	57.8	10,594,000	18,328,000	1,284,000
February 7	315,556	202,810	64	177,938	8,897,000	15,777,000	56.6	10,010,000	17,685,000	1,113,000
14	318,125	210,546	66	185,953	9,298,000	15,906,000	58.6	10,484,000	17,891,000	1,186,000
21	314,822	195,229	62	167,405	8,370,000	15,741,000	54.6	9,513,000	17,423,000	1,143,000
28	316,579	206,744	65	179,811	8,990,000	15,829,000	57.0	10,145,000	17,796,000	1,155,000
March 6	319,496	212,560	67	184,575	9,228,000	15,974,000	58.9	10,304,000	17,494,000	1,076,000
13	325,571	204,860	32	182,507	9,125,000	16,278,000	57,2	10,277,000	17,966,000	1,152,000
20	326,282	208,719	64	183,149	9,157,000	16,314,000	56.6	10,348,000	18,282,000	1,191,000
27	328,275	220,373	67	195,447	9,772,000	16,413,000	58.7	10,998,000	18,704,000	1,226,000
April 3	289,372	208,611	72	171,402	8,570,000	14,468,000	58.4	9,715,000	16,635,000	1,145,000
10	308,066	212,948	69	169,229	8,461,000	15,403,000	55.7	9,644,000	17,314,000	1,183,000
17	316,252	168,641	53	137,700	6,885,000	15,812,000	43.3	7,563,000	17,466,000	675,000
24	320,009	178,977	56	152,414	7,620,000	16,000,000	46.4	8,485,000	18,286,000	865,000
May 1	325,810	184,916	57	159,711	7,985,000	16,290,000	46.2	8,896,000	19,255,000	911,000
8	328,448	191,400	58	164,103	8,205 000	16,422,000	48.9	9,069,000	18,546,000	864,000
15	329,630	182,049	55	156,924	7,846,000	16,481,000	46.3	8,756,000	18,911,000	910,000
22	332,550	189,994	57	163,946	8,197,000	16,627,000	48.5	9,252,000	19,076,000	1,055,000
29	334,131	195,381	58	168,983	8,449,000	16,706,000	50.2	9,568,000	19,059,000	1,119,000
June 5	307,492	190,030	62	161,140	8,057,000	15,374,000	53.7	9,141,000	17,022,000	1,084,000
12	345,203	208,354	60	185,055	9,252,000	17,260,000	54.6	10,355,000	18,965,000	1,103,000
19	344,495	207,927	60	179,501	8,975,000	17,223,000	53.9	10,095,000	18,729,000	1,120,000
26	346,293	212,338	61	188,649	9,432,000	17,314,000	55.5	10,536,000	19,020,000	1,124,000
July 3	343,411	213,890	62	184,632	9,231,000	17,170,000	55.0	10,286,000	18,702,000	1,055,000
10	294,911	224,346	76	174,486	8,724,000	14,745,000	64.3	9,659,000	15,022,000	935,000
17	340,203	238,899	70	195,937	9,797,000	17,010,000	58.2	10,930,000	18,780,000	1,133,000
24	330,151	235,283	71	190,049	9,502,000	16,507,000	57.7	10,470,000	18,146,000	968,000
31	296,105	223,133	75	164,666	8,233,000	14,805,000	46.0	9,371,000	20,372,000	1,138,000
August 7	313,356	244,695	78	188,055	9,402,000	15,667,000	58.6	10,432,000	17,802,000	1,030,000
14	333,613	260,018	78	211,658	10,582,000	16,680,000	65.8	11,813,000	17,953,000	1,231,000
21	328,534	250,387	76	196,441	9,822,000	16,426,000	59.9	11,039,000	18,429,000	1,217,000
28	330,916	247,031	75	204,030	10,201,000	16,545,000	60.5	11,383,000	18,815,000	1,182,000
September 4	335,602	242,835	72	199,707	9,985,000	16,780,000	60.2	11,167,000	18,550,000	1,182,000
11	289,390	249,390	86	190,392	9,514,000	14,469,000	66.5	10,685,000	16,068,000	1,171,000
18	320,010	267,278	84	209,192	10,459,000	16,000,000	63.6	11,654,000	18,324,000	1,195,000
25	327,733	270,456	83	212,567	10,628,000	16,386,000	64.5	11,851,000	18,374,000	1,223,000
ber 2	329,213	260,673	79	205,009	10,250,000	16,460,000	62.8	11,350,000	18,073,000	1,100,000
9	330,815	265,958	80	217,884	10,894,000	16,540,000	67.9	12,103,000	17,825,000	1,209,000
16	328,910	262,318	80	217,245	10,862,000	16,445,000	68.0	12,110,000	17,809,000	1,248,000
23	332,369	270,114	81	220,927	11,046,000	16,618,000	68.1	12,232,000	17,962,000	1,188,000
30	334,183	267,955	80	223,851	11,192,000	16,709,000	68.7	12,407,000	18,060,000	1,215,000
ovember 6	305,570	282,615	89	206,041	10,302,000	15,278,000	71.8	11,429,000	15,918,000	1,127,000
13	324,108	281,191	87	220,063	11,003,000	16,205,000	67.9	12,132,000	17,867,000	1,129,000
20	331,151	266,065	81	211,912	10,595,000	16,557,000	64.6	11,693,000	18,101,000	1,098,000
27	298,988	258,323	86	207,762	10,388,000	14,949,000	72.1	11,488,000	15,933,000	1,100,000
December 4	332,947	283,794	85	232,782	11,639,000	16,647,000	71.1	12,812,000	18,020,000	1,173,000
11	330,583	281,058	85	234,352	11,717,000	16,529,000	71.5	12,865,000	17,993,000	1,148,000
18	312,369	286,017	92	221,623	11,081,000	15,618,000	67.8	12,155,000	17,928,000	1,074,000
25	245,894	237,209	96	177,934	8,896,000	12,294,000	68.5	9,683,000	14,136,000	787,000

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4,

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Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 8.

December 11, 1922

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES, (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1919

ICC DOCKETS NOS. 12530 & 13896
GUTHEIM EXHIBIT No.

1919 WEEK ENDING		1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January	4	196,942	274,167	139	147,567	7,378,000	9,847,000	73.1	8,459,000	11,446,000	1,081,000
	11	221,004	294,546	133	180,515	9,026,000	11,050,000	71.9	10,361,000	14,410,000	1,335,000
	18	212,030	282,884	133	171,474	8,574,000	10,602,000	68.0	9,883,000	14,533,000	1,309,000
	25	204,864	280,390	137	159,918	7,996,000	10,240,000	61.3	9,236,000	15,066,000	1,240,000
February	1	188,983	296,209	157	144,550	7,228,000	9,449,000	56.4	8,316,000	14,744,000	1,088,000
	8	181,772	300,875	166	136,543	6,827,000	9,089,000	52.5	7,947,000	15,108,000	1,130,000
	15	180,066	298,986	166	134,554	6,728,000	9,003,000	51.3	7,700,000	15,009,000	972,000
	22	173,543	297,408	171	135,288	6,764,000	8,677,000	51.5	7,722,000	14,965,000	958,000
March	1	179,122	305,661	171	141,813	7,091,000	8,956,000	52.9	8,090,000	15,293,000	999,000
	8	179,503	306,208	171	140,496	7,025,000	8,975,000	53.0	8,081,000	15,247,000	1,056,000
	15	178,996	305,432	171	139,985	6,999,000	8,950,000	52.4	8,050,000	15,362,000	1,051,000
	22	170,811	305,265	179	133,654	6,683,000	8,541,000	48.8	7,484,000	15,336,000	801,000
	29	168,873	299,072	177	133,828	6,691,000	8,444,000	49.4	7,592,000	15,368,000	901,000
April	5	159,587	270,595	169	122,376	6,119,000	7,984,000	47.3	6,984,000	14,765,000	865,000
	12	168,189	288,704	172	134,487	6,724,000	8,409,000	50.1	7,544,000	15,057,000	820,000
	19	170,201	291,405	171	133,467	6,673,000	8,510,000	49.7	7,411,000	14,911,000	738,000
	26	173,958	290,747	167	132,125	6,606,000	8,698,000	50.6	7,378,000	14,581,000	772,000
May	3	180,813	293,900	163	143,435	7,172,000	9,041,000	53.3	8,022,000	15,050,000	850,000
	10	181,866	297,606	164	152,546	7,627,000	9,093,000	55.1	8,438,000	15,203,000	811,000
	17	186,817	291,337	156	155,138	7,757,000	9,341,000	56.1	8,436,000	15,037,000	679,000
	24	188,573	293,024	155	156,766	7,838,000	9,429,000	57.9	8,724,000	15,067,000	886,000
	31	178,482	267,139	150	143,151	7,158,000	8,924,000	53.4	7,938,000	14,865,000	780,000
June	7	193,045	293,675	152	160,237	8,012,000	9,652,000	59.0	8,927,000	15,130,000	915,000
	14	195,152	285,627	146	159,393	7,970,000	9,758,000	57.5	8,485,000	14,756,000	515,000
	21	200,337	264,467	132	156,652	7,833,000	10,017,000	58.1	8,681,000	14,941,000	848,000
	28	209,205	268,872	129	169,490	8,475,000	10,460,000	61.8	9,470,000	15,323,000	995,000
July	5	178,195	227,298	128	134,771	6,739,000	8,910,000	58.6	7,459,000	12,925,000	720,000
	12	222,975	275,798	124	182,738	9,137,000	11,149,000	67.6	10,225,000	15,125,000	1,088,000
	19	231,142	260,532	113	176,314	8,816,000	11,557,000	63.9	9,889,000	15,500,000	1,073,000
	26	241,740	247,667	102	178,096	8,905,000	12,087,000	62.5	9,988,000	16,000,000	1,083,000
August	2	245,702	234,116	95	175,877	8,794,000	12,285,000	61.8	9,942,000	16,100,000	1,148,000
	9	250,701	213,978	85	166,662	8,333,000	12,535,000	58.7	9,359,000	16,000,000	1,026,000
	16	257,572	204,535	79	161,708	8,085,000	12,879,000	55.5	9,092,000	16,400,000	1,007,000
	23	265,289	237,406	89	192,414	9,621,000	13,264,000	68.2	10,662,000	15,633,000	1,041,000
	30	274,950	219,508	80	185,823	9,291,000	13,748,000	65.9	10,457,000	15,867,000	1,166,000
September	6	243,992	214,165	88	168,973	8,449,000	12,200,000	70.3	9,663,000	13,745,000	1,214,000
	13	282,820	234,877	83	197,579	9,879,000	14,141,000	69.4	11,062,000	15,939,000	1,183,000
	20	285,392	240,256	84	201,589	10,079,000	14,270,000	71.4	11,248,000	15,753,000	1,169,000
	27	290,434	248,958	86	207,812	10,391,000	14,522,000	72.4	11,606,000	16,030,000	1,215,000
October	4	291,145	250,163	86	209,585	10,479,000	14,557,000	73.8	11,528,000	15,620,000	1,049,000
	11	292,116	252,765	87	214,737	10,736,000	14,606,000	74.0	11,881,000	16,055,000	1,145,000
	18	296,607	248,915	84	211,617	10,581,000	14,830,000	73.8	11,832,000	16,032,000	1,251,000
	25	296,823	282,432	95	235,770	11,789,000	14,841,000	81.8	13,135,000	16,057,000	1,346,000
November	1	268,894	293,835	109	219,085	10,954,000	13,445,000	** Miners Strike	12,111,000	** Miners Strike	1,157,000
	8	79,350	98,624	124	55,555	2,778,000	3,968,000	"	3,552,000	"	774,000
	15	85,669	102,771	120	63,441	3,172,000	4,283,000	"	4,026,000	"	854,000
	22	122,611	139,099	113	88,498	4,425,000	6,131,000	"	5,344,000	"	919,000
	29	115,786	145,264	125	87,710	4,386,000	5,789,000	"	5,326,000	"	940,000
December	6	114,534	137,505	120	85,678	4,284,000	5,727,000	"	5,245,000	"	961,000
	13	134,430	150,192	112	98,003	4,900,000	6,722,000	"	5,800,000	"	900,000
	20	260,890	271,943	104	185,227	9,261,000	13,045,000	78.4	10,501,000	13,394,000	1,240,000
	27	231,552	209.543	90	153,616	7,681,000	11,578,000	69.0	8,531,000	12,636,000	850,000

NOTES: Includes bituminous and lignite mines in every instance.
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Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 8.
** Information not available account of Miners Strike.

December 11, 1922

STATEMENT SHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES. (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FULL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) REDUCED POTENTIAL CAPACITY, - BY WEEKS FOR CALENDAR YEAR 1918.

100 POCKETS NOS. 12530 & 11896
OUTSIDE EXHIBIT NO.

1918 WEEK ENDING	1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50-TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January 5	281,052	208,631	74	171,610	8,581,000	14,053,000	73.1	9,376,000	12,826,000	795,000
12	305,496	214,500	70	189,279	9,464,000	15,273,000	65.4	10,139,000	15,498,000	632,000
19	306,762	178,033	58	153,894	7,695,000	15,338,000	55.8	8,566,000	15,351,000	871,000
26	320,119	206,823	65	182,402	9,120,000	16,006,000	66.1	10,100,000	15,279,000	980,000
February 2	311,603	204,232	66	172,701	8,635,000	15,580,000	60.6	9,483,000	15,648,000	849,000
9	317,421	212,374	67	184,206	9,210,000	15,871,000	64.9	10,111,000	15,700,000	901,000
16	327,231	231,698	71	198,925	9,946,000	16,362,000	71.6	11,122,000	15,533,000	1,176,000
23	316,399	222,611	70	193,827	9,691,000	15,820,000	68.3	10,616,000	15,541,000	925,000
March 2	324,317	226,848	70	200,905	10,045,000	16,216,000	70.7	10,111,000	15,715,000	66,000
9	323,873	228,697	71	204,364	10,218,000	16,194,000	70.6	11,265,000	15,956,000	1,047,000
16	327,247	215,211	66	193,821	9,691,000	16,362,000	66.8	10,922,000	16,350,000	1,231,000
23	318,441	220,418	69	191,718	9,586,000	15,922,000	69.3	10,998,000	15,870,000	1,412,000
30	322,546	215,689	67	187,974	9,399,000	16,142,000	66.2	10,888,000	16,447,000	1,489,000
April 6	284,635	207,207	73	160,450	8,023,000	14,232,000	62.3	9,319,000	14,958,000	1,296,000
13	312,855	224,394	72	187,332	9,367,000	15,643,000	70.1	10,835,000	15,456,000	1,468,000
20	314,951	234,365	74	188,295	9,415,000	15,748,000	72.2	11,121,000	15,405,000	1,708,000
27	312,710	240,085	77	204,917	10,246,000	15,636,000	74.7	11,804,000	15,801,000	1,558,000
May 4	311,134	242,858	78	204,555	10,228,000	15,557,000	75.6	11,554,000	15,283,000	1,326,000
11	307,522	246,616	80	207,387	10,369,000	15,376,000	76.6	11,805,000	15,411,000	1,436,000
18	305,539	243,579	80	205,808	10,290,000	15,292,000	76.0	11,718,000	15,418,000	1,428,000
25	299,470	246,476	82	205,832	10,292,000	14,974,000	75.8	11,801,000	15,568,000	1,209,000
June 1	270,691	229,988	85	186,793	9,340,000	13,535,000	70.1	10,707,000	15,271,000	1,167,000
8	292,420	267,756	92	215,802	10,790,000	14,621,000	82.3	12,427,000	15,099,000	1,837,000
15	302,092	261,707	87	221,043	11,052,000	15,105,000	80.3	12,606,000	15,698,000	1,554,000
22	302,734	253,016	84	211,442	10,572,000	15,137,000	79.6	11,999,000	15,074,000	1,427,000
29	307,049	263,032	86	220,507	11,025,000	15,352,000	80.0	12,344,000	15,410,000	1,319,000
July 6	257,470	238,183	93	182,979	9,149,000	12,874,000	83.8	10,252,000	12,233,000	1,103,000
13	299,173	286,393	96	234,337	11,717,000	14,959,000	86.8	13,286,000	15,306,000	1,589,000
20	303,547	277,494	91	232,004	11,600,000	15,177,000	85.0	12,924,000	15,204,000	1,324,000
27	306,171	269,074	88	228,352	11,418,000	15,309,000	83.1	12,937,000	15,567,000	1,519,000
August 3	304,180	262,204	86	219,964	10,998,000	15,209,000	82.3	12,545,000	15,243,000	1,547,000
10	301,191	251,613	84	212,946	10,647,000	15,060,000	79.6	12,[illegible],000	15,438,000	1,342,000
17	303,750	242,323	80	209,308	10,465,000	15,188,000	77.7	11,928,000	15,351,000	1,463,000
24	302,292	255,534	85	219,601	10,980,000	15,115,000	81.2	12,636,000	15,561,000	1,656,000
31	295,232	255,620	87	220,858	11,043,000	14,762,000	80.9	12,691,000	15,687,000	1,648,000
September 7	264,399	242,025	92	196,874	9,844,000	13,220,000	85.8	11,215,000	13,071,000	1,171,000
14	278,183	268,350	96	221,459	11,073,000	13,909,000	83.4	12,707,000	15,236,000	1,634,000
21	285,894	271,795	95	223,101	11,155,000	14,295,000	84.5	12,699,000	15,028,000	1,544,000
28	285,034	273,657	96	229,760	11,488,000	14,252,000	85.5	13,043,000	15,254,000	1,555,000
October 5	283,478	268,318	95	221,942	11,097,000	14,174,000	85.2	12,560,000	14,741,000	1,451,000
12	280,248	261,663	93	217,432	10,872,000	14,012,000	82.0	12,250,000	14,939,000	1,178,000
19	265,806	256,557	97	200,103	10,005,000	13,290,000	79.4	11,516,000	14,503,000	1,311,000
26	256,007	256,438	100	196,077	9,804,000	12,800,000	79.0	11,314,000	14,321,000	1,510,000
November 2	252,014	264,428	105	190,873	9,544,000	12,601,000	79.2	10,857,000	13,708,000	1,312,000
9	247,190	280,068	113	183,907	9,195,000	12,360,000	77.6	10,381,000	13,377,000	1,186,000
16	231,936	292,464	126	169,635	8,482,000	11,597,000	73.2	9,724,000	13,284,000	1,242,000
23	242,750	295,767	122	191,366	9,568,000	12,138,000	82.7	10,973,000	13,268,000	1,405,000
30	216,497	264,795	122	169,379	8,469,000	10,825,000	81.9	9,690,000	11,811,000	1,221,000
December 7	237,658	298,548	126	192,396	9,620,000	11,883,000	79.7	10,985,000	13,782,000	1,305,000
14	226,875	270,969	119	184,150	9,208,000	11,344,000	73.4	10,623,000	14,472,000	1,415,000
21	219,624	273,446	125	175,815	8,791,000	10,981,000	71.6	10,137,000	14,157,000	1,346,000
28	164,255	221,390	135	109,989	5,499,000	8,213,000	58.1	6,426,000	11,060,000	927,000

NOTES: Includes bituminous and lignite mines in every instance.
Information shown in columns 1, 2, 3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.

Information shown in column 7 and 8 taken from weekly reports coal production of U.S. Geological Survey.
Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 6.

STATEMENTSHOWING FOR BITUMINOUS AND LIGNITE MINES IN THE ENTIRE UNITED STATES, (a) CONDITION OF CAR SUPPLY, (b) PERCENTAGE OF FLL TIME WORKED, (c) ACTUAL PRODUCTION AND (d) DEDUCED POTENTIAL CAPACITY,- BY WEEKS FOR CALENDAR YEAR 1917

ICC DOCKETS NOS. 12530 & 13696
GUTHEIM EXHIBIT NO.

1917 WEEK ENDING		1 CARS REQUIRED	2 CARS FURNISHED	3 % CARS FURN. TO CARS REQ.	4 CARS LOADED	5 APPROXIMATE TONNAGE PRODUCED IN CARS LOADED ON 50 TON BASIS	6 TONNAGE FOR WHICH CARS ORDERED ON 50- TON BASIS	7 PERCENT OF FULL TIME WORKED BY ALL MINES ENTIRE UNITED STATES	8 TOTAL BITUMINOUS COAL PRODUCTION ENTIRE UNITED STATES	9 POTENTIAL PRODUCTION ENTIRE UNITED STATES	10 APPROXIMATE TONNAGE PRODUCED AND NOT SHIPPED FROM MINE BY RAILROAD
January	6	256,478	225,589	88	182,716	9,135,000	12,823,000	* Information not Available	10,169,000	* Information not Available	1,034,000
	13	263,806	236,217	90	202,712	10,135,000	13,190,000	"	11,488,000	"	1,353,000
	20	285,482	208,210	73	181,655	9,052,000	14,274,000	"	10,372,000	"	1,320,000
	27	286,269	212,971	74	192,653	9,632,000	14,313,000	"	10,951,000	"	1,319,000
February	3	287,581	213,019	74	185,064	9,253,000	14,379,000	"	10,512,000	"	1,259,000
	10	285,332	200,866	70	173,733	8,686,000	14,266,000	"	9,769,000	"	1,083,000
	17	294,168	206,635	70	180,311	9,015,000	14,708,000	"	10,130,000	"	1,115,000
	24	295,591	221,736	75	191,361	9,568,000	14,779,000	"	10,681,000	"	1,113,000
March	3	296,841	220,443	74	193,062	9,653,000	14,842,000	"	11,058,000	"	1,405,000
	10	295,058	211,805	72	185,718	9,285,000	14,752,000	"	10,979,000	"	1,694,000
	17	290,595	218,687	75	189,315	9,465,000	14,529,000	"	11,191,000	"	1,726,000
	24	287,856	213,191	74	185,920	9,296,000	14,392,000	"	10,983,000	"	1,687,000
	31	288,322	209,656	73	185,041	9,252,000	14,416,000	"	10,940,000	"	1,688,000
April	7	251,569	196,283	78	157,943	7,897,000	12,578,000	"	8,984,000	"	1,087,000
	14	270,959	206,744	76	167,846	8,392,000	13,548,000	"	9,564,000	"	1,122,000
	21	267,561	208,634	78	175,188	8,759,000	13,378,000	"	9,844,000	"	1,085,000
	28	282,993	206,762	73	183,735	9,186,000	14,149,000	"	10,171,000	"	986,000
May	5	281,495	200,713	71	176,005	8,800,000	14,074,000	"	9,952,000	"	1,152,000
	12	293,201	213,411	73	190,401	9,520,000	14,660,000	"	10,677,000	"	1,157,000
	19	294,551	219,510	75	194,338	9,717,000	14,727,000	"	10,727,000	"	1,010,000
	26	295,155	218,917	74	192,315	9,615,000	14,757,000	"	10,770,000	"	1,155,000
June	2	270,699	207,749	77	173,592	8,679,000	13,534,000	"	10,112,000	"	1,433,000
	9	285,952	236,237	83	187,823	9,391,000	14,297,000	"	10,789,000	"	1,398,000
	16	295,525	236,143	80	199,916	9,995,000	14,776,000	"	11,485,000	"	1,490,000
	23	297,096	228,026	77	195,669	9,783,000	14,854,000	"	11,243,000	"	1,460,000
	30	304,658	228,848	75	199,131	9,956,000	15,232,000	"	11,446,000	"	1,490,000
July	7	242,020	207,374	86	157,852	7,892,000	12,101,000	"	8,766,000	"	874,000
	14	283,789	246,235	87	205,670	10,283,000	14,189,000	"	11,154,000	"	872,000
	21	284,627	227,364	80	193,482	9,674,000	14,231,000	"	10,623,000	"	949,000
	28	279,201	226,817	81	195,957	9,798,000	13,960,000	"	10,650,000	"	852,000
August	4	288,182	223,293	77	191,228	9,561,000	14,409,000	"	10,412,000	"	851,000
	11	287,874	216,447	75	184,567	9,228,000	14,393,000	"	10,477,000	"	1,249,000
	18	271,399	217,695	80	179,162	8,958,000	13,569,000	"	10,114,000	"	1,156,000
	25	274,259	226,303	83	188,435	9,421,000	13,712,000	"	10,586,000	"	1,165,000
September	1	281,872	226,820	80	191,512	9,575,000	14,093,000	"	10,883,000	"	1,308,000
	8	247,700	208,660	84	172,392	8,619,000	12,385,000	"	10,059,000	"	1,440,000
	15	273,569	232,654	85	191,818	9,590,000	13,678,000	"	11,116,000	"	1,526,000
	22	277,612	229,589	83	185,946	9,297,000	13,881,000	75.3	10,831,000	14,384,000	1,534,000
	29	283,863	233,633	82	194,146	9,707,000	14,193,000	77.7	11,279,000	14,516,000	1,572,000
October	6	279,869	226,389	81	188,561	9,428,000	13,993,000	77.6	10,962,000	14,126,000	1,534,000
	13	287,939	225,026	78	192,310	9,616,000	14,397,000	76.9	10,924,000	14,205,000	1,308,000
	20	280,632	225,176	80	177,850	8,893,000	14,032,000	65.8	10,125,000	15,288,000	1,232,000
	27	292,248	232,689	80	192,024	9,601,000	14,612,000	74.9	10,884,000	14,531,000	1,483,000
November	3	295,734	227,822	77	191,479	9,574,000	14,787,000	75.4	10,893,000	14,447,000	1,319,000
	10	297,293	232,272	78	202,535	10,127,000	14,865,000	77.8	11,071,000	14,230,000	944,000
	17	305,442	232,313	76	204,451	10,223,000	15,272,000	75.3	11,279,000	14,979,000	1,056,000
	24	299,298	228,416	76	202,618	10,131,000	14,965,000	74.2	11,187,000	15,077,000	1,056,000
December	1	270,844	216,017	80	184,132	9,207,000	13,542,000	74.8	10,565,000	14,124,000	1,358,000
	8	287,760	226,916	79	204,511	10,226,000	14,388,000	73.6	12,143,000	16,499,000	1,917,000
	15	284,340	182,681	64	152,032	7,602,000	14,217,000	57.7	9,193,000	15,932,000	1,591,000
	22	294,342	210,365	71	182,306	9,115,000	14,717,000	68.4	10,923,000	15,969,000	1,808,000
	29	251,898	210,709	84	159,730	7,987,000	12,595,000	75.4	9,737,000	12,914,000	1,750,000

NOTES: Includes bituminous and lignite mines in every instance,
Information shown in columns 1,2,3, and 4 taken from weekly coal loading reports of Car Service Division, American Railway Association.
Information shown in columns 5 and 6 deduced from columns 1 and 4.

Information shown in columns 7 and 8 taken from weekly reports coal production of U.S. Geological Survey.
Information shown in column 9 deduced from columns 7 and 8.
Information shown in column 10 deduced from columns 5 and 8
* Information not published by Geological Survey.

December 11, 1922.

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 605

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

No. 709

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants

v.

BERWIND-WHITE COAL MINING COMPANY ET AL.

No. 710

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants

v.

BETHLEHEM STEEL COMPANY ET AL.

No. 711

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants

v.

RAINEY-WOOD COKE COMPANY ET AL.

No. 712

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO ADVANCE

The Solicitor General moves to advance the foregoing appeals for hearing in the present Term and on a day closely following the February recess which may be convenient to the Court.

The appeals are from the final decrees of the specially-constituted District Court (Circuit Judge Woolley and District Judges Thompson and Thomson) entered December 15, 1925 (9 Fed. Rep. (2d) 429), which annulled and permanently enjoined an order of the Commission in the so-called *Assigned Car Cases* (80 I. C. C. 520; 93 I. C. C. 701), the main part of which reads as follows:

> *It is further ordered,* That each of the respondents which distributes cars to bituminous coal mines located upon its line or customarily dependent upon it for car supply be, and each is hereby, notified and required to establish on or before September 1, 1923, and thereafter to maintain and enforce a regulation and practice whereby all cars distributed by such respondent to such mines must be distributed on a pro rata basis, and if cars are assigned or consigned to any of such mines and if such cars are placed at the mines to which assigned or consigned, they must be so placed that every mine on the same division or district established by respondent for the distribution of cars shall receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division

> or district, and that all such assigned or consigned cars must be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged.

The questions include the construction of paragraphs (10), (11), (12), (13), (14), (15), (16), and (17) of Section 1 of the Interstate Commerce Act, as amended by Section 402 of the Transportation Act of 1920 (c. 91, 41 Stat. 476, 477), and known in the transportation and coal-trade parlance as the "car service provisions"; and also the construction of Sections 3 and 15 of the Act.

In No. 606, the railroads claim the right to the preferred use of assigned cars for the purpose of securing their locomotive fuel from either their own mines or mines with which they have fuel contracts.

In No. 709, No. 710, and No. 711 the appellees are private manufacturers; and in No. 712 the appellee is a public utility. Their privately owned cars pass into the possession of and are operated by the railroads, which pay to these shipper-owners an allowance of 1.5 cents per mile for the use of the cars. In the event of a car shortage, these appellees will claim the right to the exclusive use of these cars and to that extent the preferred transportation service and advantage over and above all other shippers and consumers of coal.

MOTION

The public interest is involved and the appeals have priority under the Urgent Deficiencies Act (c. 32, 38 Stat. 220), and the Commerce Court Act (c. 309, 36 Stat. 539, 542).

In each of the five appeals the appellees are represented by different counsel. It is suggested the five shall be heard together as in the District Court, which rendered one opinion covering all. When the cases are called for argument, an application will be made for an extension of time, and request made that the time allotted, the number of counsel allowed to appear, and the order of argument shall then be fixed.

From the final decree in each case Pocahontas Operators' Assocation et al., as intervenors, have prosecuted separate appeals, which are numbered 638, 713, 714, 715, and 716, respectively. Separate counsel for those intervenor-appellants requests that any order on the foregoing motion to advance shall be so extended as to include those appeals.

Notice of the presentation of the foregoing motion has been seasonably given to all interested counsel.

WILLIAM D. MITCHELL,
Solicitor General.

NOVEMBER, 1926.

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